

Syllabus

IN THE MATTER OF
UNITED BUYERS CORP. ET AL.
MODIFIED CEASE AND DESIST ORDER

Docket 3221. Order, June 17, 1947

Modified order in proceeding in question, which involved the purchasing of certain wholesale grocery concerns and their cooperative buying organization, and in which findings as to the facts, and original order issued on November 13, 1941, 34 F. T. C. 87—

- (a) Requiring respondent United Buyers Corporation, its officers, etc., to cease and desist from (1) accepting from sellers any brokerage or commission, upon purchase of commodities in interstate commerce, by itself, or by any of its stockholders, etc.; and from (2) transmitting, etc., to buyers of commodities any brokerage received on such buyers' purchases of commodities in interstate commerce, etc.;
- (b) Requiring respondent stockholders in said corporation, their officers, etc., to cease and desist from accepting from sellers of commodities or from respondent United Buyers Corporation, any brokerage upon their purchases of commodities in interstate commerce, etc.; and
- (c) Requiring respondent sellers, their officers, etc., to cease and desist from paying or granting to United Buyers Corporation, any brokerage upon their sales of commodities in interstate commerce except where said corporation renders them a bona fide selling service as their selling agent or broker, and does not act for or on behalf of, or under the direct or indirect control of, the purchasers in such transactions; all as in detail set forth therein.

Before *Mr. W. W. Sheppard* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Allen C. Phelps, *Mr. J. J. Smith, Jr.*, and *Mr. J. B. Truly* for the Commission.

Mr. I. J. Berkson, of Chicago, Ill., for respondent United Buyers Corporation, and respondent individuals, as officers and directors thereof; with whom also appeared for former *Taylor & Conradis*, of Washington, D. C.

Squire, Sanders & Dempsey, of Cleveland, Ohio for William Edwards Co.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for Angelus Campfire Co.

Weil, Gotshal & Manges, of New York City, for Champion Chemical Works.

Mr. George F. Nelson, of Chicago, Ill., for J. B. Inderrieden Co.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents, with the exception of the Angelus Campfire Co., have violated the provisions of section 2 (c) of the Clayton Act, approved October 15, 1914 (38 Stat. 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C., sec. 13), and issued its order to cease and desist dated November 13, 1941; and the Commission having further considered said order to cease and desist after having given notice to respondents to show cause why said order to cease and desist should not be modified in certain specified particulars, and having considered the answer to said notice and the oral arguments of counsel; and being of the opinion that paragraph 2 of said order should be made more explicit, and having issued its order modifying paragraph 2 of said order, now issues this its modified order to cease and desist:

It is ordered, That respondent United Buyers Corporation, its officers, directors, agents, representatives, and employees, do forthwith cease and desist from:

1. Directly or indirectly, in any manner or form whatever, accepting from sellers any brokerage or commission, or any allowance, discount, or thing of value in lieu thereof, upon the purchase of com-

¹ Order published as modified by Commission order of same date, as follows:

This matter came on to be heard before the Federal Trade Commission upon the motion of March 6, 1946, by the chief counsel and assistant chief counsel of the Commission for modification of the order to cease and desist entered in this proceeding on November 13, 1941, and upon the order entered March 18, 1946, to show cause why said order should not be modified in the particulars set out in said motion; and the Commission having considered the answer of respondent United Buyers Corp. to said order to show cause, having heard the oral arguments of counsel in support of and in opposition to said motion, and being now fully advised, and it appearing to the Commission that said order to cease and desist should be made more explicit with respect to services or benefits provided through the expenditure of brokerage commissions, and more comprehensive with respect to the buyer respondents, but that the motion should be denied as to striking the excepting clause from the paragraph covering seller respondents:

It is ordered, That the aforesaid motion of March 6, 1946, to modify the order to cease and desist entered in this proceeding on November 13, 1941, be, and the same hereby is, granted in all particulars except as to the striking from the paragraph directed to seller respondents of the final clause of such paragraph reading:

"except in transactions in which United Buyers Corporation renders to them a bona fide selling service as their selling agent or broker, and does not act for or on behalf of, or under the direct or indirect control of, the purchasers in such transactions."

and that said order to cease and desist be, and the same hereby is, modified accordingly.

It is further ordered That a modified order to cease and desist incorporating the modifications provided for in this order be issued and served upon respondents.

Commissioner Mason not participating.

modities in interstate commerce, by itself, by any of its stockholders, or by any buyer for whom in fact, on whose behalf, or under whose direct or indirect control it acts.

2. Directly or indirectly, in any manner or form whatever, transmitting, passing, or granting to buyers of commodities any brokerage or commission, or any allowance, discount, or thing of value in lieu thereof, received on such buyers' purchases of commodities in interstate commerce, either in the form of money or credits or in the form of services or benefits provided or furnished by respondent United Buyers Corporation through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

It is further ordered, That respondents, H. P. Lau Co., Bluffton Grocery Co., Lima-Kenton Grocery Co., S. Zollinger Co., William Edwards Co., and Copps Co., and all other stockholders in United Buyers Corp. prior to May 21, 1941, their officers, directors, agents, representatives, and employees, do forthwith cease and desist from accepting from the sellers of commodities or from respondent United Buyers Corp., through or by means of the use or expenditure of any any brokerage or commission, or any allowance, discount, or thing of value in lieu thereof, upon their purchases of commodities in interstate commerce, either in the form of money or credits or in the form of services or benefits provided or furnished by respondent United Buyers Corp., through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

It is further ordered, That respondents, Allison-Bedford Co., Blue Seal Products Co., Bordo Products Co., Champion Chemical Works, Cupples Co., Dean Milk Co., and J. B. Inderrieden Co., their officers, directors, agents, representatives, and employees, do forthwith cease and desist from paying or granting, directly or indirectly, to United Buyers Corp., any brokerage or commission, or any allowance or discount or anything of value as compensation in lieu thereof upon their sales of commodities in interstate commerce, except in transactions in which United Buyers Corp. renders to them a bona fide selling service as their selling agent or broker, and does not act for or on behalf of, or under the direct or indirect control of, the purchasers in such transactions.

It is further ordered, That the complaint herein be, and hereby is, dismissed as to:

1. Respondent Arthur E. Koeniger.
2. Respondent Eli P. Gale.
3. Respondent Helen M. Driscoll.

4. Respondent Angelus Campfire Co.

Respondent, Arthur E. Koeniger, is deceased; respondent, Eli P. Gale and Helen M. Driscoll, have resigned their offices and positions with the United Buyers Corp. and there is no indication that they are likely to resume their previous employment with it; and the record does not show that respondent Angelus Campfire Co., a seller-respondent, has paid any brokerage or commissions to United Buyers Corp.

It is further ordered, That the respondents, except those as to whom the complaint is dismissed, shall file with the Commission, within sixty (60) days after service upon them of this order, a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Mason not participating.

Syllabus

IN THE MATTER OF

McKINLEY-ROOSEVELT, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5272. Complaint, Feb. 3, 1945—Decision, June 25, 1947

Where a corporation and three individuals, who were president and treasurer, secretary, and director thereof, and who formulated its policies and controlled and directed its activities; engaged in the interstate sale and distribution of courses of study and instruction in numerous subjects, including (as listed under the caption "Departments" on the corporate letterhead—which also displayed the legend "Chartered by the State of Illinois as an educational institution") "Law and Letters, Public Health, Architecture, Engineering, Mathematics, Agriculture, Psychology, Accounting, Philosophy, Education, Sociology, Statistics, Chemistry, Theology, Business, Physics, Speech"; and in carrying on said business from a three-room office, in charge of the corporation's aforesaid president and treasurer, who had some six girl employees doing the clerical and stenographic work under her supervision, and who, although referred to in some of the advertising as "Dr." had no academic degree of any kind;

Making use of a teaching method under which a student was supplied with a standard textbook, together with sets of questions covering the various chapters, sometimes purchased by the school from outside sources and sometimes prepared by the instructors (of whom there were two full-time and four part-time), who checked and graded the answers sent in, and returned them to the student together with criticism and suggestions;

- (a) Represented, through advertising material including letters, circulars, catalogs, and pamphlets sent to those replying to such typical advertisements as "STUDY AT HOME with a chartered educational institution, courses in Art; Sciences; Philosophy;" etc., etc., that it was an educational institution of higher learning authorized to confer academic degrees recognized by other institutions of higher learning and by the United States Civil Service Commission and prospective employers; and emphasized throughout its said advertising the academic degrees awarded by it to its graduates, and frequently sent to prospective students a facsimile of a diploma showing that the degree of "Doctor of Philosophy" was awarded by the corporation to the person named therein;
- (b) Represented, as aforesaid, that it maintained separate departments for many of its courses of study, and that its said courses were superior or equal to those offered by resident colleges and universities; and
- (c) Represented, through its practice of granting or conferring so-called degrees, that it was an institution of higher learning and that such degrees possessed academic value and were recognized in the educational field;

The facts being it was actually a correspondence school which, as aforesaid, operated from a three-room office, and while, like other correspondence schools, it might serve a useful purpose, it clearly was not an institution