

IN THE MATTER OF

KETCHIKAN PACKING COMPANY AND WM. H. STANLEY,
INC. (NAMED IN THE COMPLAINT AS WILLIAM H.
STANLEY, INC.)

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (c) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5164. Complaint, May 23, 1944—Decision, Sept. 3, 1947

Where a corporation engaged in Ketchikan, Alaska, and with sales office in Seattle, Wash., in the canning of salmon and in the interstate sale and distribution of its said product to, among other purchasers, a New York, and a Norfolk, distributor of food products, under a practice and course of action by which a shipment was invoiced on its stationery as "sold to" the one or the other, and was released at destination upon payment of the draft attached to the bill of lading, and any loss following shipment was borne by said distributors; and it had no knowledge or interest, at the time of shipment, as to whether or not said distributors had sold all or any of the products to others—

- (a) Granted and allowed to said distributors, and to other purchasers, brokerage fees or commissions which usually amounted to 5 percent of the net sales price of each order of canned salmon purchased; and

Where said New York distributor, obtaining a substantial portion of its sea-food products from packers and distributors in the various States, including aforesaid packer of canned salmon, under a course of action and practice by which, following its securing of the product in question upon payment of the draft attached to the bill of lading, it dealt with such products in all respects as its own property and subject to its full and complete control; storing the same in public warehouses in its name, using the warehouse receipts as collateral for bank loans on its own account, insuring the merchandise in its own name and at its own expense, and reselling the same in its own name and under its registered trade-marks and private brands—which it supplied to the packer or distributor concerned—to such purchasers and at such prices and upon such terms as it desired—

- (b) Received and accepted from aforesaid packer of canned salmon, and from other sellers, brokerage fees or commissions which amounted, as above set forth, usually to 5 percent of the net sales price of each order in the case of the salmon purchases, and varied from 3½ percent to 5 percent of the net sales price of other sea-food products purchased; accomplished usually through deducting the amount of the brokerage fee or commission from the sales price of the products sold, on the face of the invoice:

Held, That the granting and allowance by said salmon packer, and the receipt and acceptance by said New York distributor, of brokerage fees, commissions or allowances as above set forth, constituted violations by them of subsection (c) of section 2 of the Clayton Act as amended.

In a proceeding in which the allowance of brokerage fees or commissions by a salmon packer to a distributor, upon shipments of its products to said dis-

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tributor, was challenged as a violation of subsection (c) of section 2 of the Clayton Act as amended, as was said distributor's receipt and acceptance of such fees or commissions from said packer and other sellers of sea-food products; and in which it appeared, among other things, that said packer, upon shipment of the products, invoiced them as "sold to" said distributor and had no knowledge or interest as to whether the distributor sold any or all of the products to others, and, after payment of the sight draft attached to the bill of lading, had no further control or dominion over the products—which were stored, insured, and resold largely under the distributor's private and advertised marks and brands, as supplied to the packer, and otherwise dealt with in all respects as said distributor's own products:

The Commission was of the opinion—as respects the contention of both said packer and said distributor that the relationship between the parties was that of principal and broker and that the provision by the latter and another distributor consignee of warehouse facilities, and their sales activities, constituted services rendered to the principal, i. e., the packer, in the sale and distribution of its products—that such claim was not tenable, and that while, in certain transactions, such a relation might obtain and said distributor might represent other packers as a broker or sales agent for which brokerage was paid and received in legitimate transactions, in transactions herein concerned the record clearly demonstrated that said packer had sold to said New York and other distributors, directly and for their own accounts, substantial quantities of canned salmon, and that said distributor had purchased from said and other packers and distributors, in its own name and for its own account, in transactions in which it did not function as a broker, substantial quantities of canned salmon and other sea-food products; and

Further found that any and all services performed by said distributor, or by any of the other distributors involved in such purchases, were services rendered to said New York or other distributor as purchaser, owner, and subsequent seller of the products, and not services rendered to the packer or distributor from whom the products were purchased.

Before *Mr. John L. Horner*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Padden & Moriarty, of Seattle, Wash., for Ketchikan Packing Co.

Mr. Jay Bowerman, of Portland, Oreg., for William H. Stanley, Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

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PARAGRAPH 1. Respondent Ketchikan Packing Co. is a corporation organized and existing under the laws of the Territory of Alaska, with its principal office and place of business located in the city of Ketchikan, Territory of Alaska, where it has engaged and is engaged in the business of canning and packing canned salmon, which are thereafter shipped to Seattle, Wash., where the respondent maintains a general sales office, for labeling, warehousing, distribution, and sale. This respondent is hereinafter designated as the respondent seller.

PAR. 2. The respondent seller, since June 19, 1936, has engaged in the business of distributing and selling canned salmon, in its own name, and for its own account, for resale; to promote such sales and to distinguish its canned salmon from the canned salmon sold by competitors, respondent seller utilizes registered trade-marks or brands, which brands are generally known to the trade as packers' or sellers' brands, as distinguished from the trade-marks or brands utilized by buyers, which brands are generally known to the trade as buyers' brands or private brands.

The respondent seller's brands are utilized by it to identify its canned salmon in the consumer's mind so that respondent seller may establish a market for its branded products and enhance and maintain the resulting benefits of consumer acceptance and good will created by its products.

The respondent sells and distributes its canned salmon under its own registered brands "Nemo," "Sea," and "K. P. Co.," and also sells and distributes such products under the private brands of its buyers and also under the private brands of its buyers' customers.

PAR. 3. The respondent seller, since June 19, 1936, has distributed and sold and distributes and sells its canned salmon through direct sales to certain buyers, who are paid commissions or brokerage fees on purchases made by them in their respective names and for their respective accounts, and the respondent seller's method of distribution and sale to them, as hereinafter illustrated, is representative of the distribution and sales methods of a number of west coast packers.

Such buyers customarily designate themselves as "brokers," "merchandise brokers," or as "primary distributors," although they are known to the trade as "buying brokers" or "speculative brokers." Such "buying brokers" or "speculative brokers" customarily operate by placing orders for merchandise with those sellers, and only with those sellers, who will grant and pay them commissions or brokerage fees on their own purchases, including purchases under their own private brands. Some of such buyers are large-scale buyers and sellers of merchandise distributed under their own private brands, which brands

usually show the name and address of the buyer but not of the packer, and identifies the merchandise as being the product of the respective buyer who owns the label.

Such buyers place their orders for merchandise with respondent seller and other sellers, who, on receiving and accepting such orders, deliver the merchandise to a common carrier for delivery, but require that the buyer pay the purchase price as a condition precedent to the delivery of the merchandise. If such merchandise is lost or damaged in transit, such buyers file claims in their own names and collect damages from the carrier for their own account.

On receipt of the merchandise, such buyers insure such merchandise and warehouse it in their own warehouses or in public warehouses, and thereafter generally utilize the warehouse receipts covering the merchandise, together with the insurance contract, as collateral or security to obtain bank loans.

Such buyers mask these operations under the fictionalized designation of "brokers," "merchandise brokers," or "primary distributors," for the sole purpose of coloring the name and method of their operation in order to collect commissions or brokerage fees from respondent seller and other sellers who will pay such buyers commissions or brokerage fees on their own purchases, notwithstanding the fact that it is well known to be the custom of such buyers to invoice and sell such merchandise in their own names, for their own accounts, at their own prices, and on their own terms, and to assume full and complete credit risks.

PAR. 4. Respondent William H. Stanley, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 103 East One hundred and twenty-fifth Street, New York, N. Y. Since June 19, 1936, it has engaged in the business of buying for resale and selling for its own account and in its own name, canned salmon and other sea-food products and is one of the largest exclusive purchasers of sea-food products in the United States. This respondent's method of purchase and sale, as herein illustrated, is generally representative of the purchase and sales methods of a number of the respondent seller's other buyers. This respondent at various periods since June 19, 1936, has utilized at its own expense considerable space in many public warehouses located in various sections of New York City and the States of New York and New Jersey, to store in its own name and for its own account its large, extensive, and valuable stock of salmon and other sea-food products. This respondent is hereinafter designated as respondent buyer.

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PAR. 5. The respondent buyer since June 19, 1936, to promote its sales of canned salmon and other sea-food products, to establish a demand and create good will for its own private brands of salmon and other sea-food products, and to build up a business in its own name and for its own account under its own private brands as distinguished from the various packers' brands of salmon and other sea-food products it buys and sells, has utilized several registered trade-marks as brands.

Some of the respondent buyer's private brands are: Alasker, Fish Net, Sea Spray, Servmor, Eatmor, Upstream, Everfine, Good Buy, Our First, and Stream King.

The respondent buyer has created a wide demand for its salmon and other sea-food products sold under its own private brands and is one of the largest, if not the largest private brand distributor of such products in the United States.

This respondent buys its private brand products from many packers, and often in a given season, or during the same approximate period of time, will purchase canned salmon and other canned sea-food products under one or more of its private brands from several competing sellers.

PAR. 6. Respondent buyer, William H. Stanley, Inc., since June 19, 1936, in the course and conduct of its said business, has purchased in its own name and for its own account, for resale, a substantial portion of its requirements of packers' brands, its private brands and its customers' private brands of canned salmon products, from respondent seller Ketchikan Packing Co., which company is located, and distributes its commodities from States other than the State where the respondent buyer is located, and pursuant to said respondent buyer's purchase and said respondent buyer's instructions, such commodities are caused to be shipped and transported by the respondent seller across State lines to the respondent buyer, or to respondent buyer's customers.

The respondent buyer's purchases from the respondent seller are representative of the respondent buyer's purchases of salmon and other sea-food products, since June 19, 1936, from the packers and distributors listed below, which commodities are purchased under the respective packers' brands, respondent buyer's own private brands, and respondent buyer's customers' brands:

Alaska Salmon Co.,	San Francisco,	Coast Fishing Co.,	Wilmington,
Calif.		Calif.	
Columbia River Packers Assn.,	Funsten & Co.,	San Francisco,	
Astoria, Oreg.	Calif.		

Halfhill Co., Ltd., Los Angeles, Marine Products Co., San Diego,
Calif. Calif.

E. H. Hamlin Co., Seattle, Wash. Parrott & Co., San Francisco,

H. A. Irving & Co., San Francisco, Calif.
Calif.

L. P. Maggioni & Co., Savannah,
Ga.

PAR. 7. Respondent seller, Ketchikan Packing Co., since June 19, 1936, in connection with the sale of its canned salmon, in interstate commerce, to respondent buyer, William H. Stanley, Inc., for its own account for resale, and to other buyers for their own account for resale, as hereinbefore set forth, has transmitted, paid and delivered, and does transmit, pay and deliver, directly or indirectly, to said respondent buyer, William H. Stanley, Inc., and to other buyers for their own respective accounts, commissions, brokerage, or other compensation or allowances in lieu thereof, in substantial amounts, and respondent buyer William H. Stanley, Inc., since June 19, 1936, has received and accepted, and is now receiving and accepting commissions, brokerage, and other compensation or allowances in lieu thereof in connection with its purchases of canned salmon, in interstate commerce, from respondent seller Ketchikan Packing Co., and from other sellers from whom respondent buyer purchases and has purchased canned salmon and other sea-food products in its own name, and for its own account, for resale.

PAR. 8. The foregoing acts of respondent seller, Ketchikan Packing Co., in granting and paying commissions or brokerage fees on its sales of salmon to William H. Stanley, Inc., and to other buyers, and the foregoing acts of respondent buyer William H. Stanley, Inc., in receiving and accepting commissions or brokerage fees on its purchases of salmon from Ketchikan Packing Co., and from other sellers, are in violation of the provisions of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. sec. 13), the Federal Trade Commission on May 23, 1944, issued and subsequently served its complaint in this proceeding

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upon the respondents, Ketchikan Packing Co., a corporation, and Wm. H. Stanley, Inc., a corporation (named in the complaint as William H. Stanley, Inc.) charging them with the violation of subsection (c) of section 2 of said Clayton Act as amended. After the filing by the respondents of their answers to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, answer, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ketchikan Packing Co. is a corporation organized and existing under the laws of the Territory of Alaska, with its principal office and place of business located in the city of Ketchikan, Territory of Alaska, and a branch or sales office located in the city of Seattle, State of Washington. This respondent, hereinafter referred to as "Ketchikan," is engaged in the business of canning, selling, and distributing salmon.

PAR. 2. Respondent Wm. H. Stanley, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 103 East One Hundred and Twenty-fifth Street, New York, N. Y. This respondent, hereinafter referred to as "Stanley," is engaged in the sale and distribution of food products, particularly canned sea foods.

PAR. 3. (a) In the course and conduct of its business, respondent Ketchikan sells and distributes its canned salmon to buyers located in various States of the United States and causes its products, when sold, to be transported from its sales office in Seattle, Wash., to the purchasers of such products at their respective points of location in States other than the State of Washington. At all times since June 19, 1936, this respondent has maintained a course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

(b) In the course and conduct of its business, respondent Stanley obtains a substantial portion of the sea-food products it distributes

from packers and distributors located in various States of the United States other than the State of New York and causes said sea-food products to be transported from points in States other than the State of New York to its place of business and to other points located within the State of New York. Among the packers and distributors from whom this respondent obtains said sea-food products are the Columbia River Packers Association, of Astoria, Oreg.; H. A. Irving Co., of San Francisco, Calif.; E. H. Hamlin Co., of Seattle, Wash.; Coast Fishing Co., of Wilmington, Calif.; and respondent Ketchikan Packing Co. At all times since June 19, 1936, respondent Stanley has maintained a course of trade in the products obtained from these sellers in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. Since June 19, 1936, it has been the practice of respondent Ketchikan, upon receiving orders for canned salmon from respondent Stanley and from C. C. Waddill Co., Inc., another distributor of food products located in Norfolk, Va., to fill the orders by shipping canned salmon to these companies either by steamship or by railway common carrier. The products so shipped are usually invoiced on stationery of Ketchikan Packing Co., showing that they have been "Sold to" Wm. H. Stanley, Inc., or to C. C. Waddill Co., Inc., and in such cases the products are consigned to the order of respondent Ketchikan, with a notation on the shipping papers that Wm. H. Stanley, Inc., or C. C. Waddill Co., Inc., is to be notified upon arrival of the products at destination. Attached to the original bill of lading in these transactions is a draft, payable at sight, drawn by Ketchikan Packing Co. against Wm. H. Stanley, Inc., or C. C. Waddill Co., Inc., for the full purchase price of the products shipped, and upon arrival of the goods at destination and payment of the draft, but not before, the shipment is released. At the time respondent Ketchikan so ships its products to Stanley or Waddill, it has no knowledge or interest in whether or not Stanley or Waddill has sold all or any of such products to others. Upon receipt of the proceeds of the draft attached to the bill of lading, respondent Ketchikan has no further claim on, or dominion over, the products shipped, and any loss or reduction in value of the products after they have been shipped by Ketchikan to either Stanley or Waddill is borne not by Ketchikan, but by Stanley or Waddill. Upon shipment of the products to Stanley or Waddill such products are shown on Ketchikan's records as having been sold to Stanley or Waddill, and each of the transactions is included as a gross sale on the income-tax returns of respondent Ketchikan.

PAR. 5. The course of dealing between respondent Ketchikan and respondent Stanley as hereinabove described is typical of the ordinary

course of dealing that has prevailed since June 19, 1936, between a number of other packers and distributors of canned sea foods and respondent Stanley. In the same way that Stanley obtains canned salmon from Ketchikan it also obtains canned salmon and other sea-food products from Columbia River Packers Association, H. A. Irving Co., E. H. Hamlin Co., Coast Fishing Co., and others. In the case of its dealings with each of these sellers, respondent Stanley customarily submits an order in its own name, and in filling the order the packer or distributor invoices the products ordered to Wm. H. Stanley, Inc., attaches to the original bill of lading a draft drawn on Stanley for the full purchase price of the products shipped, and permits delivery of the products to Stanley only after the draft has been paid.

PAR. 6. After the sea-food products obtained as aforesaid are paid for and received by respondent Stanley such products are in all respects Stanley's own property and are subject to Stanley's full and complete control. They are stored in public warehouses in the name of Wm. H. Stanley, Inc., at times for months, and the warehouse receipts issued therefor are freely used by Stanley as collateral to secure loans from banks on Stanley's own account. Respondent Stanley insures the merchandise in its own name and at its own expense, pays such taxes as may be levied thereon, resells the merchandise in its own name to such purchasers and at such prices and upon such terms of sale as it desires, sometimes reaping a profit and at other times sustaining a loss on the transaction, and, on occasions, guarantees its customers against declines in prices of the products sold to them. If the merchandise is lost or damaged while in transit from the packer or distributor to respondent Stanley, Stanley files a claim against the carrier in its own name and for its own benefit for such loss; and it is Stanley's regular practice to include on its income-tax returns as purchases and sales all of the acquisitions and dispositions of sea foods as herein described. Occasionally, respondent Stanley enters into written contracts of purchase with packers and distributors of sea-food products calling for the future delivery of large quantities of such products. Such contracts ordinarily state, among other things, that the packer or distributor has sold, and that Wm. H. Stanley, Inc., has purchased, the quantities of products specified, at the prices and under the conditions stated; that such goods are at the risk of the buyer from and after delivery thereof by the seller to the carrier, with the buyer assuming all responsibility for shortages, losses, delays, or damage in transit upon the issuance of a clean bill of lading by the carrier; and that all storage charges incurred in connection with the handling of the products after the buyer has paid for them will be

paid by the buyer. The record also shows a number of instances in which the sea-food products specified in some of these contracts were invoiced and delivered.

Respondent Stanley is the owner of 11 registered trade-marks which it utilizes as private brands for sea-food products. A substantial portion of the products acquired by Stanley in the manner described, both from Ketchikan and from other packers and distributors, is packed and shipped to Stanley under these private brands. The labels for such brands bear the name and address of Wm. H. Stanley, Inc., but do not disclose the identity of the packer. Such labels are supplied by Stanley to the packer or distributor, who affixes them to the containers, and Stanley spends substantial sums advertising these private brands. Respondent Stanley has obtained from competing sellers and sold under its own private brand names large quantities of canned sea foods.

PAR. 7. Respondents Ketchikan and Stanley both deny that the transactions herein described constitute sales by Ketchikan or purchases by Stanley, contending that the relationship between the parties to such transactions is that of principal and broker and that the provision by Stanley and by Waddill of warehouse facilities, and their sales efforts, collections, advertising, and other activities engaged in as herein set forth constitute services rendered to the principal in the sale and distribution of the latter's products. It may be that in certain transactions the relationship between Ketchikan and Stanley and the relationship between Ketchikan and distributors of food products other than Stanley is that of principal and broker, and it may be, too, that Stanley does represent packers or distributors of sea-food products other than Ketchikan as a broker or sales agent for which brokerage is paid and received in legitimate brokerage transactions. If that is true, these phases of the respondents' business operations are not involved in the present proceeding and the Commission makes no finding in connection therewith. The record clearly demonstrates, on the other hand, and the Commission does find that in the ordinary course of business since June 19, 1936, respondent Ketchikan has sold to respondent Stanley and to other distributors of food products, directly and for their own accounts, substantial quantities of canned salmon and that respondent Stanley has purchased from Ketchikan and from other packers and distributors, in its own name and for its own account, in transactions in which it did not function as a broker, substantial quantities of canned salmon and other canned sea-food products. The Commission further finds that any and all services performed by Stanley, or by any of the distributors other than Stanley, in connection with the

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handling or distribution of the products involved in such purchases are services rendered to Stanley or to such other distributor as purchaser, owner, and subsequent seller of the products and not services rendered to Ketchikan or to any other packer or distributor from whom the products are purchased.

PAR. 8. In connection with the sale and purchase in interstate commerce of canned salmon and other sea-food products as herein described, it has been the regular practice of Ketchikan Packing Co. to grant and allow to Stanley and to other purchasers, and it has been the regular practice of Wm. H. Stanley, Inc., to receive and accept from Ketchikan and from other sellers brokerage fees or commissions. In the case of transactions between Ketchikan and Stanley, and transactions between Ketchikan and C. C. Waddill Co., Inc., such brokerage fees or commissions have usually amounted to 5 percent of the net sales price of each order of canned salmon purchased. In the case of transactions between other packers and distributors of sea-food products and Stanley, the amounts of such fees or commissions have varied from $3\frac{1}{2}$ to 5 percent of the net sales price of the sea foods purchased. The payment of the brokerage fee or commission is usually accomplished by deducting the amount thereof from the sales price of the products sold on the face of the invoice.

CONCLUSION

The granting and allowance by respondent Ketchikan Packing Co., and the receipt and acceptance by respondent Wm. H. Stanley, Inc., of brokerage fees, commissions, or allowances in lieu thereof under the circumstances and in the manner aforesaid constitute violations by said respondents of subsection (c) of section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as

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amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13) :

It is ordered, That the respondent Ketchikan Packing Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of sea-food products or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from—

Paying or granting, directly or indirectly, to Wm. H. Stanley, Inc., or to any other buyer, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for such buyer's own account.

It is further ordered, That the respondent Wm. H. Stanley, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of sea-food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from—

Receiving or accepting from Ketchikan Packing Co., or from any other seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance, or discount in lieu thereof, upon purchases made for its own account.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

E. S. ULLMANN-ALLIED COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5397. Complaint, Oct. 25, 1945—Decision, Sept. 12, 1947

Where a corporation engaged in the purchase of animal peltries in foreign countries, and in the interstate sale and shipment thereof to dealers and garment manufacturers from its place of business in New York—

Designated and described certain peltries imported and sold by it as aforesaid as "sealskins"; notwithstanding the fact that such peltries, while obtained from the young of a branch of the seal family, were not obtained from the earless or true seal family, nor from the eared fur seals or sea bears, which, like the other, have the dense coat of soft, short fur under the stiff long hair which forms the outer covering of all members of both families; and were not fur seals, nor the sealskins used in the manufacture of the fur garments long and favorably known among the trade and the purchasing public as such; but were obtained from young sea lions found in South America, skins of which are characterized by short hair and which are popularly referred to as "rock seals";

With capacity to mislead the public through such advertising or other reference, and lacking the explanatory term "South American rock" immediately preceding use of words "seal" or "sealskin," to mislead the public into the belief that products in question were fur sealskins, or garments made therefrom, and to cause substantial portion of the public, thus misled, to purchase substantial quantities of said products as a result of the mistaken belief thus engendered:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. DeWitt T. Puckett for the Commission.

Mr. Sidney Tolmage, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that E. S. Ullmann-Allied Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, E. S. Ullmann-Allied Co., Inc., is a corporation organized, existing, and doing business under and by