

Complaint

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IN THE MATTER OF

ALFRED J. HARRIS DOING BUSINESS AS A. J. HARRIS & CO. AND AS SMITH STORAGE CO., INC., AND AS PRESIDENT OF A. J. HARRIS & CO., INC.; AND A. J. HARRIS & CO., INC., DOING BUSINESS IN ITS OWN NAME AND AS SMITH STORAGE CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION C OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5628. Complaint, Dec. 20, 1948—Decision, July 1, 1949

Where a corporation and an individual who owned substantially all of its stock and had been its president since incorporation and continuance by it of the business theretofore individually carried on by him; engaged in the distribution of food products (1) as brokers, with no financial interest in the products other than the commission or brokerage fees which they received from their seller-principals for making the sale; and (2) as buyers of food products for their own account;

in carrying on purchase of products for their own account, in which connection they transmitted orders directly to sellers by whom products concerned were invoiced and shipped directly to them or in the corporate name of their otherwise inactive hauling and drayage concern (used to make such purchases for resale and to conceal from the sellers that such purchases were made for their own accounts); and with which products they dealt as traders for profit, taking title, and warehousing and selling the same at their own prices and terms, etc., and assuming all the risks incident to ownership—

Received and accepted, directly or indirectly, from the respective sellers from whom they purchased products for their own account, brokerage fees, commissions or other compensation or allowances or discounts in lieu thereof:

Held, That such receipt and acceptance of brokerage fees, or commissions or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchasers of food products, as above set forth, constituted a violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and Mr. Edward S. Ragsdale for the Commission.

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:

PARAGRAPH 1. Respondent, Alfred J. Harris, an individual doing business as A. J. Harris & Co., established this business in Baltimore, Md., in 1932, which business is presently located at 232 North Franklinton Road, Baltimore, Md., under the name of A. J. Harris & Co., Inc., and has engaged and is now engaged in the purchase, sale, and distribution of canned fruit, canned vegetables, and canned fish, hereinafter referred to as food products.

Alfred J. Harris was the sole owner of A. J. Harris & Co. and exercised complete authority and control over the business conducted by the company, including the direction of its purchasing, distribution, and sales policies from the time said business was established until June 1946 when the succeeding business was incorporated as A. J. Harris & Co., Inc.

PAR. 2. Alfred J. Harris, is an individual, with his office and principal place of business located at 232 North Franklinton Road, Baltimore, Md., is the principal stockholder in A. J. Harris & Co., Inc., owning all or substantially all of the capital stock of said corporation, and from the time it was incorporated in June 1946, has been president of said corporation. He has exercised complete authority and control over the business conducted by said corporation, including the direction of its purchasing, distribution, and sales policies from the date the business was incorporated to the present time.

PAR. 3. Respondent, A. J. Harris & Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business located at 232 North Franklinton Road, Baltimore, Md., and is engaged in the purchase, sale and distribution of food products. Respondent corporation is a continuation of A. J. Harris & Co., which was established in 1932 and was incorporated in June 1946, with Alfred J. Harris as president. Alfred J. Harris owns all or substantially all of the capital stock of said corporation and exercises complete authority and control over the business conducted by said corporation, including the direction of its purchasing, distribution, and sales policies.

PAR. 4. Smith Storage Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business presently located at 232 North Franklinton Road, Baltimore, Md., which is the same address shown for re-

spondents. At the present time, this concern is shown to be active in name only. However, at the time it was organized, it was for the purpose of engaging in hauling and drayage for respondents.

For a substantial period of time, since June 19, 1936, the corporate name Smith Storage Co., Inc., has been used by respondents to make purchases of food products for the account of A. J. Harris & Co. and A. J. Harris & Co., Inc., for resale and to cover up the fact from the sellers that such purchases were made for these accounts.

PAR. 5. The respondents named in the caption hereof and each of them hereinafter referred to as respondents, for a substantial period since June 19, 1936, have been engaged in the business of distributing food products by two separate and distinct methods; namely, (1) as brokers, which is not challenged by the complaint herein, and (2) as buyers, which is challenged by the complaint herein.

First: Respondents' business as "brokers" of food products may be described as follows:

Respondents, in such capacity, act as sales agents negotiating the sale of food products for and on account of seller-principals, and respondents' only compensation for such services is a commission or brokerage fee paid by such seller-principals. The respondents solicit and obtain orders for such food products at the respective seller-principal's prices and on such seller-principal's terms of sale. Respondents, as brokers, transmit purchase orders to their several seller-principals who thereafter generally invoice and ship such food products directly to their customers and collect the purchase price from such customers.

Respondents, as brokers of food products, have no financial interest in the food products they sell. Their only financial interest is the commission or brokerage fee they receive and accept from their seller-principals for making the sale. Such commission or brokerage fees are customarily based on a percentage of invoice sales price of food products sold. The respondents, in this capacity, are brokers and not traders for profit. Respondents do not take title to, or have any financial interest in, the food products sold, and neither make a profit nor suffer a loss on the transaction. This phase of respondents' business is not challenged by the complaint.

Second: Respondents' business as buyers of food products, which is challenged by the complaint herein, is described as follows: Respondents transmit their own purchase orders for food products directly to the various sellers from whom they buy. Such sellers invoice and ship such food products directly to respondents, or to Smith Storage Co., Inc., for respondents' account, who receive and accept, directly or

indirectly, from their respective sellers from whom they purchase such food products for their own account, brokerage fees, commissions, or other compensation or allowances or discounts in lieu thereof.

The respondents, in connection with such purchasers, are direct buyers and, as such, are traders for profit, purchasing and reselling such food products for their own account and at their own prices and on their own terms, taking title thereto and assuming all the risks incident to ownership. The respondents, upon receipt of such food products from the various sellers, warehouses such products in their own warehouse and insure said food products at their own expense and in their own name and for their own account against contingent loss or damage.

When the respondents sell such food products, they invoice the products to their customers in respondents' own name and for their own account and at prices and on terms they determine, assuming full and complete credit risk on such transactions and either receiving a profit or accepting a loss thereon, as the case may be.

PAR. 6. Respondents and each of them for a substantial period since June 19, 1936, made and are now making numerous and large purchases of food products from sellers located in States other than the State of Maryland where respondents are located, pursuant to which purchases, such food products were shipped and transported in commerce by the sellers thereof from the respective States in which they are located across State lines, either to respondents, or pursuant to respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by respondents. Respondents also sold, distributed, and transported, and continue to sell, distribute, and transport, a substantial quantity of such food products in commerce to customers outside the State in which respondents are located.

PAR. 7. The respondents, and each of them, in connection with the purchase and sale of food products in commerce since June 19, 1936, as hereinabove alleged and described, have received and accepted, and are now receiving and accepting directly or indirectly, commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof from the various sellers from whom they purchase food products in commerce for their own account and for resale, in the manner and under the circumstances set out in the second or last part of paragraph 5 above.

PAR. 8. The foregoing acts and practices of the respondents, and each of them, in receiving and accepting commissions, brokerage, or

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other compensation or allowances, or discounts in lieu thereof, from each of the various sellers in connection with their purchase of food products in commerce are in violation of subsection (c) 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on December 20, 1948, issued and subsequently served its complaint in this proceeding upon the respondents, A. J. Harris & Co., Inc., a corporation doing business in its own name and in the name of Smith Storage Co., Inc., and Alfred J. Harris, an individual doing business as A. J. Harris & Co. and as Smith Storage Co., Inc., and as an officer of A. J. Harris & Co., Inc., charging them with violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint the respondents filed an answer admitting all of the allegations contained in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and answer filed by the respondents; 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, A. J. Harris & Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business located at 232 North Franklinton Road, Baltimore, Md., and is engaged in the purchase, sales, and distribution of canned fruit, canned vegetables, and canned fish, hereinafter referred to as food products. Respondent corporation was organized in June 1946 and is a continuation of the business conducted since 1932 by the individual respondent Alfred J. Harris trading as A. J. Harris & Co.

PAR. 2. Alfred J. Harris is an individual with his office and principal place of business located at 232 North Franklinton Road, Baltimore, Md. He is the principal stockholder in A. J. Harris & Co., Inc., owning all or substantially all of the capital stock of said corporation, and

from the time it was incorporated in June 1946 has been president of said corporation. He has exercised complete authority and control over the business conducted by said corporation, including the direction of its purchase, distribution, and sales policies from the date the business was incorporated to the present time.

PAR. 3. Smith Storage Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business presently located at 232 North Franklin-town Road, Baltimore, Md. At the present time this concern is shown to be active in name only. However, at the time it was organized it was for the purpose of engaging in hauling and drayage for respondents. For a substantial period of time since June 19, 1936, the corporate name of Smith Storage Co., Inc., has been used by respondents to make purchases of food products for the account of A. J. Harris & Co. and A. J. Harris Co., Inc., for resale and to cover up the fact from the sellers that such purchases were made for these accounts.

PAR. 4. The respondents for a substantial period since June 19, 1936, have been engaged in the business of distributing food products by two separate and distinct methods; namely, (1) as brokers of food products, with no financial interest in the food products they sell other than the commission or brokerage fee they receive and accept from their seller-principals for making the sale; and (2) as buyers of food products for their own account.

PAR. 5. In connection with their business of buying food products, the respondents transmitted their own purchase orders for food products directly to the various sellers from whom they buy. Such sellers invoiced and shipped such food products directly to respondents, or to Smith Storage Co., Inc., for respondents' account. Respondents received and accepted directly or indirectly, from the respective sellers from whom they purchased such food products for their own account, brokerage fees, commissions, or other compensation or allowances or discounts in lieu thereof.

The respondents, in connection with such purchases, are direct buyers and, as such, are traders for profit, purchasing and reselling such food products for their own account and at their own prices and on their own terms, taking title thereto and assuming all the risks incident to ownership. The respondents, upon receipt of such food products from the various sellers, warehoused such products in their own warehouse and insured said food products at their own expense and in their own name and for their own account against contingent loss or damage.

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When the respondents sold such food products, they invoiced the products to their customers in respondents' own name and for their own account and at prices and on terms they determined, assuming full and complete credit risk on such transactions and either receiving a profit or accepting a loss thereon, as the case may be.

PAR. 6. Respondents, and each of them, for a substantial period since June 19, 1936, made, and are now making, numerous and large purchases of food products from sellers located in States other than the State of Maryland, where respondents are located, pursuant to which purchases such food products were shipped and transported in commerce by the sellers thereof from the respective States in which they are located across State lines, either to respondents, or pursuant to respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by respondents. Respondents also sold, distributed, and transported, and continue to sell, distribute, and transport, a substantial quantity of such food products in commerce to customers outside the State in which respondents are located.

PAR. 7. The respondents, and each of them, in connection with the purchase and sale of food products in commerce since June 19, 1936, as hereinabove described, have received and accepted, and are now receiving and accepting, directly or indirectly, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof, from the various sellers from whom they purchase food products in commerce for their own account and for resale.

CONCLUSION

In receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of food products in the manner and under the circumstances as hereinabove found, the respondents have violated the provisions of subsection (c) of section 2 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, which answer admits all of the allegations contained in

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the complaint; and the Commission having made its findings as to the facts and its conclusion that said 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 amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the respondents, A. J. Harris & Co., Inc., a corporation doing business under its own name and under the name of Smith Storage Co., Inc., or doing business under any other name, and Alfred J. Harris, an individual doing business as A. J. Harris & Co. and as Smith Storage Co., Inc., or doing business under any other name, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of canned fruit, canned vegetables, canned fish, or other products, in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage or commission, or any compensation, allowance, or discount in lieu thereof, upon purchases made for respondents' 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.

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IN THE MATTER OF

ALEX LEWIS AND HERMAN OFFENHENDEN TRADING
AS LOC PRODUCTSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5542. Complaint, May 18, 1948—Decision, July 7, 1949*

Where two individuals engaged in the interstate sale and distribution of push cards and punchboards, including (1) many designed for the sale of various specified articles, as explained by instructions thereon, whereunder those who by chance punched lucky or winning numbers received articles of merchandise without additional cost at much less than normal retail prices, and others received nothing for their money other than the privilege of a push or punch; and (2) other devices upon which the purchasers placed in the blank spaces provided instructions of similar import, and which were made use of only in combination with other merchandise so as to enable them to sell and distribute the same by lot or chance—

Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing and other articles in commerce, by whom assortments of such articles, as packed and assembled together with said cards and boards were sold for sale to the public through sales of chances to procure articles at much less than the normal retail price thereof, contrary to an established public policy of the United States and in violation of criminal laws;

With the result that many retailers were thereby induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed merchandise together with said push card or punchboard devices; and they thereby supplied to and placed in the hands of such retailers the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of merchandise, and the means and instrumentalities for engaging in unfair acts and practices:

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

Mr. J. W. Brookfield, Jr. for the Commission.

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 Alex Lewis and Herman Offenhenden, individuals and as copartners trading as Loc Products, have violated the provisions of the 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. Respondents, Alex Lewis and Herman Offenhenden, are individuals and partners trading and doing business as Loc Prod-