

Syllabus

IN THE MATTER OF

J. RICHARD PHILLIPS, JR. & SONS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATIONS
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5576. Complaint, July 20, 1948—Decision, Feb. 8, 1950

In a proceeding in which it was alleged that respondent sellers paid commissions or allowances upon or in connection with sales made to a certain buyer for its own account, and in which it appeared that said buyers made use of so-called consignment contracts or agreements under which it made advances—usually from 80 to 90 percent of the purchase price—ordinarily paying the balance after it resold the products, but in some instances paying the total purchase price before such resale; it appearing further, however, that said buyer, in connection with such purchases, took title to the products concerned, assumed all of the risks incident to ownership and sold them at its own prices and terms and took a profit or loss: Such use of said so-called consignment contracts or agreements obviously did not change the real nature of the transaction involved.

Where six concerns, engaged in certain Eastern States in canning food products including tomatoes, tomato juice, peas, lima beans, asparagus, and corn, and in the interstate sale and distribution thereof under their own brands and labels, and those of their customers, through brokers, and directly to a certain buyer which conducted its business as a distributor of food products in part as a broker, and in part as a direct buyer, in the latter capacity taking title to food products it purchased and assuming all the risks incident to ownership—

(a) Granted and allowed, directly or indirectly to said buyer, in connection with purchases made on its own account under so-called consignment contracts, and on transactions in which it did not function as a broker or sales agent commissions, brokerage fees or other allowances in lieu thereof; and

Where said buyer, one of the largest distributors in the South, of canned fruits and vegetables, herring, and herring roe, which it sold to customers in Virginia and the Carolinas, and owner of a number of registered trademarks which it utilized as brands for its food products—

(b) Received and accepted from the aforesaid and from numerous other sellers, on purchase made for its own account as above described, commissions, brokers' fees, or other allowances in lieu thereof:

Held, That the granting and allowance by such sellers, and the receiving and acceptance by said buyer of commissions, brokerage fees or allowances of discounts in lieu thereof, under the circumstances above set forth, constituted violations of section 2 (c) of the Clayton Act as amended.

*Mr. Edward S. Ragsdale and Mr. Cecil G. Miles for the Commission.
Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondents.*

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Gordon & Gordon, of Richmond, Va., also represented Taylor & Sledd, 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 been 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 J. Richard Phillips, Jr. & Sons, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Berlin, Md., and with a branch office and plant located at Barkers Landing, Magnolia, Del. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling and distributing such products, principally tomatoes, tomato juice, peas, and lima beans.

PAR. 2. Respondent H. P. Cannon & Son, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at Bridgeville, Del. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling and distributing such products, principally peas, asparagus, stringless beans, tomatoes, tomato juice, pumpkins, squash, lima beans, and sweet peppers.

PAR. 3. Respondent Charles T. Wrightson & Sons, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Easton, Md. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling, and distributing such products, principally peas, tomatoes, and corn.

PAR. 4. Respondent the Torsch Canning Co. is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Milford, Del. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling and distributing such products, principally mixed

vegetables, peas and carrots, lima beans, corn, succotash, peas, stringless beans, and tomatoes.

PAR. 5. Respondents Walter S. Cameron, Sr., and Walter M. Cameron, Jr., are partners trading as Cameron Bros. Canning Co., with their principal office and place of business located at Rising Sun, Md., and having a branch office and plant located at Nottingham, Pa. The respondents herein are engaged, and for many years since June 19, 1936, have been engaged, in the business of canning food products, offering for sale, selling, and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 6. Respondents Charles B. Osborn and S. Mitchell Osborn are partners trading as C. B. Osborn Sons, with their principal office and place of business located at Aberdeen, Md. The respondents herein are engaged, and for many years since June 19, 1936, have been engaged, in the business of canning food products, offering for sale, selling, and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 7. Respondents J. Richard Phillips, Jr. & Sons, Inc., H. P. Cannon & Sons, Inc., Charles T. Wrightson & Son, Inc., the Torsch Canning Co., Walter S. Cameron, Sr., and Walter M. Cameron, Jr., partners trading as Cameron Bros. Canning Co., and Charles B. Osborn and S. Mitchell Osborn, partners, trading as C. B. Osborn Sons, each and all of whom are hereinafter designated as respondent sellers, have since June 19, 1936, distributed and sold their food products through brokers to buyers, and directly to a buyer, namely, respondent Taylor & Sledd, Inc., for resale. The respondent sellers sell food products under their own labels or brands and also under buyers' labels or brands, including the brands of respondent buyer.

PAR. 8. Respondent Taylor & Sledd, Inc., is a corporation organized under the laws of the State of Virginia in 1918 with its office, warehouse and principal place of business located at 2201 East Cary Street, Richmond, Va., and has engaged and is now engaged in the purchase, sale, and distribution of food products, principally canned fruits and vegetables, herring and herring roe (all of which are hereinafter designated as food products). The respondent Taylor & Sledd, Inc. (hereinafter referred to as respondent buyer), sells and distributes such food products to its customers located principally in the States of Virginia and North and South Carolina, although substantial sales are made to other of its customers located chiefly in adjoining States. The respondent buyer purchases and sells for its own account several million dollars' worth of food products, which are packed

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principally under its own labels, each year. Such food products are purchased in commerce for resale from approximately 60 sellers, including each of the respondent sellers.

PAR. 9. The respondent sellers and each of them, for a substantial period of time since June 19, 1936, shipped, transported, and sold food products in commerce to respondent buyer and to respondent buyer's customers. The respondent buyer, for a substantial period of time since June 19, 1936, purchased, received, and accepted food products in commerce from many sellers, including each of the respondent sellers herein.

In the course and conduct of their respective businesses since June 19, 1936, as aforesaid, respondent sellers, and each of them, and the respondent buyer transport or cause to be transported the said food products hereinabove described when sold from their respective locations to the purchasers thereof located in the several States of the United States other than the States where such shipments originated and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said food products between and among the various States wherein each of the respondents' sellers and the respondent buyer, and each and all of the respective purchasers of such food products are located. Respondent sellers, and each of them, and the respondent buyer maintained, and at all times mentioned herein have maintained, a continuous course of trade and commerce in said food products among and between the various States of the United States.

PAR. 10. The respondent buyer, for a substantial period of time since June 19, 1936, and since the enactment of the Robinson-Patman Act, for the purpose of masking its operations in order to impart a color of legality to the brokerage payments it receives from sellers on its purchases of food products, originated and promulgated so-called "consignment contract or agreement." Under the provisions of the "consignment contract or agreement" the food products respondent buyer purchases in commerce are alleged to be consigned, and advances, usually from 80 to 90 percent of the purchase price, are made by respondent buyer to the sellers thereof, including respondent sellers, within 10 days after such food products are received by the respondent buyer from the respective sellers. The balance due is paid after the food products are resold by respondent buyer to its customers. On some occasions the total amount due for the food products purchased is paid to the respective sellers before the food products, or all of such food products, have been sold by respondent buyer.

PAR. 11. The respondent buyer purchases and sells all, or substantially all, of its food products bearing a printed label upon which one of its numerous trade-marks, consisting of a distinctive word, emblem, or symbol, or a combination of any of these, is shown. Such labels are utilized as brands and are attached to such food products at respondent buyer's direction by the respective sellers for the purpose of consumers identifying such commodities as the food products of the owner of the brands so that repeat sales may be centered upon such brands.

A brand, trade-mark, or trade name may be defined as a symbol of business good will. Good will, as used herein, may be defined as an attitude in consumers which causes them to continue to patronize a certain place or person, or to purchase a definite food product. Upon the brand used depends to whom the good will created by the food product accrues. Thus, when respondent buyer sells goods which bear its own brand, the good will accrues to it, whereas when it sells goods bearing the brand of another the good will accrues not to the respondent buyer but to the owner of the particular brand. That such is the purpose and effect of the use of brands is well known in the industry and generally.

The respondent buyer's food products are sold and distributed under two distinct brand classifications, namely, and principally: (1) private or distributor's brands, and (2) seller's brands.

A private brand may be defined as a brand owned and controlled by other than the original seller and, as referred to herein, designates brands utilized by respondent buyer as distinguished from the original sellers and which brands identify the food products with the respondent buyer and permits the respondent buyer to promote the sale of those food products independently of manufacturers or sellers; and respondent buyer, as distributor, rather than the manufacturers as original sellers, assumes the responsibility all the way through the channels of distribution to the consumer, and whatever good will is established accrues to the respondent buyer and not to the original sellers. Respondent buyer determines the sales and price policies with reference to such food products.

A seller's brand may be defined as a brand owned and controlled by the original seller, and, as referred to herein, designates the brands owned and utilized by the respondent sellers in the promotion and sale of their products, which brands identify the particular products for which such original sellers assume the responsibility all the way through the channels of distribution to the consumers, and whatever good will is established thereby accrues to the respective sellers.

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Respondent buyer is the largest or one of the largest distributors of food products in the South. The food products it distributes and sells are principally canned fruits and vegetables, herring and herring roe, purchasing, since June 19, 1936, such commodities from competing canners and packers, and other sellers, including each of the respondent sellers. Such products as are purchased by respondent buyer are purchased principally but not entirely under the several private brands of respondent buyer. Representative of such registered trade-marks or private brands are: Pocahontas, Tidewater, Enfield Club, Wigwam, Powhatan, Wilton, Uncle Ned, Durham Maid.

PAR. 12. Respondent buyer, since June 19, 1936, has been and is now 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: Respondent buyer's business as "brokers" of food products may be described as follows:

Respondent, in such capacity, acts as sales agent which negotiates the sale of food products for and on account of seller-principals, and respondent buyer's only compensation is a commission or brokerage fee paid by such seller-principals.

The respondent buyer solicits and obtains orders for such food products at the respective seller-principals' prices and on such seller-principals' terms of sale. The respondent buyer, as a food broker, transmits purchase orders to its several seller-principals who thereafter invoice and ship such food products directly to the customer, and collect the purchase price from such customers.

The respondent buyer, as brokers of food products, has no financial interest in the food product it sells. Its only financial interest is the commission or brokerage fee it receives and accepts from the seller-principal for making the sale. Such commissions or brokerage fees are customarily based on a percentage of the invoice sales price of the food products sold.

The respondent buyer in this capacity is a broker and not a trader for profit. The respondent does not take title to, or have any financial interest in, the food products sold and neither makes a profit nor suffers any loss on the transaction. This phase of respondent buyer's business is not challenged by the complaint.

SECOND: Respondent buyer's business as buyer of food products, which is challenged by the complaint, may be described as follows: The respondent buyer transmits its own purchase orders for food products directly to the various sellers from whom it buys. Such

sellers invoice and ship such food products directly to respondent, and receives and accepts, directly or indirectly, from the respective sellers from whom it buys such food products for its own account, commissions or brokerage fees.

The respondent buyer, in connection with such purchases, is a direct buyer and as such is a trader for profit, purchasing and reselling such food products principally under its own private brands and for its own account and at its own prices and on its own terms, taking title to such food products and assuming all the risk incident to ownership.

The respondent buyer, before purchasing, shops the market, purchasing where it is able to secure the most favorable prices and terms, including the payment of commissions or brokerage fees. If such food products, shipped to the respondent by such sellers, are lost or damaged in transit, the respondent files claim with the carrier and collects damages from the carrier in its own name and for its own account.

The respondent buyer enters into formal contracts with its sellers or with some of its sellers whereby respondent buyer contracts to buy, and the sellers contract to sell, definite quantities of certain food products at a stated price. Many of such contracts require the seller to deliver to the respondent such food products over an extended period of time at a stated price.

The respondent, upon receipt of such food products from its various sellers, warehouses such products in its own warehouses and insures the food products at its own expense and in its own name and for its own account against contingent loss or damage. The respondent buyer is also insured against accidents arising out of the handling or use of such canned foods.

When respondent buyer sells such food products, it invoices the products to its customers in its own name and for its own account and at prices and on terms it determines. The respondent assumes full and complete credit risk on such transactions, reaping a profit or sustaining a loss thereon, as the case may be.

PAR: 13. Respondent sellers, and each of them, in connection with the sale of food products in commerce to respondent buyer since June 19, 1936, as hereinabove alleged and described, have directly or indirectly granted and paid commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof to respondent buyer, and respondent buyer, in connection with the purchase of food products in commerce from each and all of the respondent sellers and other sellers since June 19, 1936, as hereinabove alleged and described,

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has directly or indirectly received and accepted commissions, brokerage fees or other compensations or allowances or discounts in lieu thereof from each of the respondent sellers and other sellers.

PAR. 14. The foregoing acts and practices of respondent sellers, and each of them, in granting and allowing commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof to the respondent buyer in connection with their sales of food products to the said respondent buyer, and the foregoing acts of respondent buyer in receiving and accepting commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof from each of the respondent sellers and other sellers in connection with its purchase of food products are in violation 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 July 20, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act, as amended. On September 24, 1948, the respondents filed their separate answers in which they denied many of the allegations of said complaint, but on February 21, 1949, they filed motions for leave to withdraw said original answers and to file in lieu thereof substitute answers in which they admit, with certain qualifications, all of the material allegations of fact contained in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission, by order entered herein on August 3, 1949, granted said motions. The filing of the substitute answers having been made with the understanding that if this proceeding were not disposed of by the issuance of a form of order to cease and desist attached thereto and recommended by the respondents, the respondents reserved to themselves the right to file written briefs and present oral argument as to the form of order which should be issued; and said proposed form of order having been altered by the Commission to the extent and for the reasons shown in the tentative order entered August 3, 1949, the respondents were afforded opportunity to show cause why said tentative order should not be entered herein as an order to cease and desist. The respondents not having appeared in response to the leave to show

cause, this proceeding regularly came on for final hearing before the Commission upon the complaint and the substitute answers; 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 J. Richard Phillips, Jr. & Sons, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Berlin, Md., and with a branch office and plant located at Barkers Landing, Magnolia, Del. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling, and distributing such products, principally tomatoes, tomato juice, peas, and lima beans.

PAR. 2. Respondent H. P. Cannon & Son, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at Bridgeville, Del. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally peas, asparagus, stringless beans, tomatoes, tomato juice, pumpkins, squash, lima beans, and sweet peppers.

PAR. 3. Respondent Charles T. Wrightson & Son, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Easton, Md. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally peas, tomatoes, and corn.

PAR. 4. Respondent the Torsch Canning Co. is a corporation organized and existing under the laws of the State of Maryland, with its office and place of business located at Milford, Del. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally mixed vegetables, peas and carrots, lima beans, corn, succotash, peas, stringless beans, and tomatoes.

PAR. 5. Respondents Walter M. Cameron, Sr. (erroneously named in the complaint as Walter S. Cameron, Sr.), and Walter M. Cameron, Jr., are partners trading as Cameron Bros. Canning Co., with their

principal office and place of business located at Rising Sun, Md., and a branch office and plant located at Nottingham, Pa. These respondents, for many years since June 19, 1936, have been engaged, and are now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 6. Respondents Charles B. Osborn and S. Mitchell Osborn are partners trading as C. B. Osborn Sons, with their principal office and place of business located at Aberdeen, Md. These respondents, for many years since June 19, 1936, have been engaged, and are now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 7. The Respondents named in paragraphs 1 to 6, inclusive, hereof (each and all of whom are hereinafter referred to as "respondent sellers"), since June 19, 1936, have distributed and sold their food products through brokers to buyers and directly to a buyer, namely, respondent Taylor & Sledd, Inc., for resale. Said respondent sellers sell their food products under their own labels or brands and also under buyers' labels or brands, including the brands of the respondent Taylor & Sledd, Inc.

PAR. 8. Respondent Taylor & Sledd, Inc., is a corporation organized in 1918 under the laws of the State of Virginia, with its office, warehouse, and principal place of business located at 2201 East Cary Street, Richmond, Va. This respondent is engaged in the purchase and in the sale and distribution of food products, principally canned fruits and vegetables, herring and herring roe. Respondent Taylor & Sledd, Inc. (hereinafter referred to as "respondent buyer"), sells and distributes such food products to its customers located principally in the States of Virginia and North and South Carolina, although substantial sales are also made to other of its customers located chiefly in adjoining States. The respondent buyer is the largest, or one of the largest, distributors of food products in the South. It purchases and sells for its own account annually several million dollars worth of food products, which products are purchased in commerce for resale from approximately 60 sellers, including each of the respondent sellers.

PAR. 9. The respondent sellers, and each of them, for a substantial period of time since June 19, 1936, have shipped, transported, and sold food products in commerce to the respondent buyer and to respondent buyer's customers. The respondent buyer, for a substantial period of time since June 19, 1936, has purchased, received, and accepted food

products in commerce from many sellers, including each of the respondent sellers named herein.

In the course and conduct of their respective businesses, since June 19, 1936, the respondent sellers, and each of them, and the respondent buyer, have transported or caused to be transported the food products hereinabove described, when sold, from their respective locations to the purchasers thereof located in the several States of the United States other than the States in which such shipments have originated, and at all times herein mentioned there has been a continuous current of trade and commerce in said food products among and between the various States wherein each of the respondent sellers and the respondent buyer, and each and all of the respective purchasers of such food products, are located. Respondent sellers, and each of them, and respondent buyer maintain, and at all times mentioned herein have maintained, a continuous course of trade and commerce in said food products among and between the various States of the United States.

PAR. 10. Respondent buyer, since June 19, 1936, has conducted, and now conducts, its business of distributing food products by two separate and distinct methods, namely, (1) as a broker, which method was not challenged by the complaint in this proceeding, and (2) as a buyer, which method was challenged by the complaint herein.

As a broker, the respondent buyer acts as an intermediary or sales agent, and in this capacity negotiates the sale of food products for and on account of various seller principals, receiving as its only compensation therefor commissions or brokerage fees paid by each such seller principal. In representing its seller principals, the respondent buyer contacts prospective purchasers, solicits and obtains orders for food products at prices and on terms of sale determined by the respective seller principals, and transmits purchase orders for such products to its several seller principals, who thereafter invoice and ship the merchandise ordered directly to the customers and collect from such customers the purchase price thereof. In this type of transaction the respondent buyer, as a broker, has no financial interest whatever in the food products it sells, its only financial interest being in the commissions or brokerage fees it expects to receive from the seller principals for making the sales, and the respondent buyer in such a case is in no sense a trader for profit. It does not take title to any of the food products sold, assumes none of the credit risk that may be involved, and it neither makes a profit nor suffers loss on any such transaction. This phase of the respondent buyer's business operations is not involved in this proceeding.

In addition to acting as a broker or sales agent, as aforesaid, the respondent buyer, in the regular course and conduct of its business, transmits to the various sellers with which it deals, including the respondent sellers, its own purchase orders for food products. Upon the receipt of such orders, the various sellers invoice and ship the food products ordered directly to the respondent buyer who, in connection with such purchases, is a direct purchaser, taking title to such food products and assuming all of the risks incident to ownership thereof. The respondent buyer, before purchasing, shops the market and purchases where it is able to obtain the most favorable prices and terms. If the food products so purchased by the respondent buyer are lost or damaged while in transit, the respondent buyer files claims with the carriers for such loss or damage and collects damages for its own benefit. Upon receiving the food products from the various sellers, the respondent buyer warehouses such products in its own warehouses, insures the products in its own name and at its own expense and for its own account against contingent loss or damage and against accidents arising out of handling, and when it sell such products it does so at prices and on terms of sale which it alone determines and thereafter invoices the products to its customers in its own name and for its own account, assuming full and complete credit risks in connection therewith and reaping a profit or sustaining a loss on the transaction, as the case may be. Respondent buyer frequently enters into formal contracts with sellers of food products whereby it contracts to buy, and the sellers contract to sell, definite quantities of certain food products at stated prices. Many of such contracts require the sellers to deliver to the respondent buyer such food products over an extended period of time. In such cases, of course, the respondent buyer's profit or loss on each of the transactions depends in part upon whether the market advances or declines after the contracts are executed.

PAR. 11. In connection with its purchases of food products for its own account as described in paragraph 10 hereof, the respondent buyer, for a substantial period of time since June 19, 1936, has also entered into so-called consignment contracts or agreements with various sellers, including the respondent sellers. Under the terms of such consignment contracts or agreements the food products purchased by the respondent buyer are purportedly consigned to it, and advances, usually from 80 to 90 percent of the purchase price of the products, are made by respondent buyer to the sellers thereof within 10 days after such food products are received by the respondent buyer from the respective sellers. The balance due on such products is ordinarily paid

after the products are resold by the respondent buyer to its customers. On some occasions, however, the total purchase price of the food products purchased under this arrangement is paid by the respondent buyer even before such products, or all of them, have been resold. The respondent buyer's use of the so-called consignment contract or agreement under these circumstances obviously does not change the real nature of the transaction involved.

PAR. 12. The respondent buyer is the owner of a number of registered trade-marks, consisting of distinctive words, emblems, or symbols, or combinations thereof, which it utilizes as brands for its food products, and the food products purchased by it from competing sellers in the manner described in the two preceding paragraphs usually, but not always, bear labels showing one or another of these private brands, which are affixed to the products by the sellers at the direction of the respondent buyer. Representative of such registered trade-marks or private brands under which such products are purchased and later resold by the respondent buyer are the following: Pocahontas, Tidewater, Enfield Club, Wigwam, Powhatan, Wilton, Uncle Ned, Durham Maid.

PAR. 13. The Commission therefore finds that since June 19, 1936, the respondent sellers have sold directly to the respondent buyer for its own account, in interstate transactions in which the respondent buyer did not function as a broker or sales agent, substantial quantities of food products. The Commission further finds that since June 19, 1936, the respondent buyer has purchased from many sellers, including each of the respondent sellers, for its own account, in interstate transactions, substantial quantities of food products. In connection with such sales to the respondent buyer, the respondent sellers have, directly or indirectly, granted and allowed to the respondent buyer commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof; and in connection with such purchases from each and all of the respondent sellers, and from other sellers, as herein found, the respondent buyer has, directly or indirectly, received and accepted from such sellers commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof.

CONCLUSION

The granting and allowance by the respondent sellers and the receipt and acceptance by the respondent buyer of commissions, brokerage fees, or allowances or discounts in lieu thereof, under the circumstances and in the manner aforesaid, constitute violations by

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each and all of 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 and the substitute answers of the respondents, in which answers said respondents admit, with certain qualifications, all of the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to said facts; 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 amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. C. C., sec. 13).

It is ordered, That the corporate respondents, J. Richard Phillips, Jr. & Sons, Inc.; H. P. Cannon & Son, Inc.; Charles T. Wrightson & Son, Inc.; and the Torsch Canning Co.; and their officers, and Walter M. Cameron, Sr., and Walter M. Cameron, Jr., individually, and as partners trading as Cameron Bros. Canning Co.; and Charles B. Osborn and S. Mitchell Osborn, individually, and as partners trading as C. B. Osborn Sons; and said respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to Taylor & Sledd, Inc., or to any other buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale made to any such buyer for its own account.

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

Receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase made for such respondent's own account.

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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
AMERICAN DENTAL TRADE ASSOCIATION 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 5636. Complaint, Feb. 1, 1949—Decision, Feb. 8, 1950

Where a large number of manufacturers and distributors of dental goods—including instruments, appliances, alloys, cement, artificial teeth, drugs and compounds, chairs, and office furniture, and all other articles employed in the practice of the dental profession—which sold and distributed over 75 percent of the volume of such goods made, sold, and distributed in the United States and, by reason thereof, were able to dominate and control said industries therein; and which, prior to the unlawful conspiracy below set out, were in competition with one another, and were still in competition with others engaged therein; together with their association, its officers, and its component dealers' clubs or associations, and manufacturers' groups—

Engaged in and carried on an unlawful understanding and conspiracy to restrain competition in price and otherwise, between and among themselves, and to monopolize said manufacture, purchase, sale, and distribution; and in furtherance of said understanding, etc.—

- (1) Classified dental goods, and agreed upon exact retail prices of such goods to be sold to both dealers and ultimate consumers; and upon uniform rates of discount for dealers purchasing from manufacturers, and uniform terms of credit for dentists and other consumers; and agreed upon and fixed uniform allowances for used dental equipment taken in exchange for new equipment, and upon uniform prices and terms of sale for such used equipment;
- (2) Agreed to and did disseminate among themselves and by and through their said association at frequent intervals, current and future quotations of prices, terms, and conditions of sale offered to the trade by member manufacturers and member dealers; and held meetings at which prices, terms and conditions of sale and trade practices and policies designed to eliminate competition in price and otherwise among themselves, were discussed and acted upon;
- (3) Agreed upon such a division of territory among the member dealers as would result in a minimum of competition among them, and established a system of policing the industry whereby deviations from pricing and selling policies and practices were reported to appropriate officers and committees of their said association and its sectional dealers' clubs, who thereafter brought pressure to bear upon the alleged price violator; with the result that the agreed-upon pricing and selling policies and practices were adhered to;
- (4) Agreed to and did cause all dealers to sell the products of the member manufacturers at prices fixed and prescribed by the latter; and prevented independent dealers from obtaining merchandise for resale by such practices as buying the entire output of manufacturers who sold to such