

Complaint

IN THE MATTER OF

CHRISTIAN BROKERAGE COMPANY ET AL.

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

Docket 5643. Complaint, Mar. 2, 1949—Decision, Sept. 8, 1952

Where a corporation and three individuals, officers and stockholders thereof, engaged (1) as brokers, and (2) as buyers for their own account, in the business of buying, selling and distributing flour, sugar, dried and canned fruits, canned vegetables and fish, and other miscellaneous food products; In the second phase of their said business, in connection with which they transmitted their own purchase orders for food products directly to the sellers, and the sellers invoiced and shipped said products directly to them for their own account, they assumed all risks incident to ownership, stored the products in their own warehouse, insured them, and invoiced them to their customers in their own name at prices and on terms determined by them, with resulting profit or loss—

Received and accepted, directly or indirectly, brokerage fees and other compensation in lieu thereof from the sellers from whom they purchased such food products in commerce for their own account and for resale:

Held, That such receipt and acceptance of brokerage fees or other compensation in lieu thereof from sellers on purchases of food products in commerce for their own account and for resale were in violation of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. C. G. Miles and Mr. Edward S. Ragsdale for the Commission.
Mr. John Ackbar Darsey, of Atlanta, Ga., for respondents.

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 Christian Brokerage Company, is a corporation organized and existing under the laws of the State of Georgia with its principal office and place of business located at 185 Spring Street, S. W., Atlanta, Georgia. The respondent corporation is now engaged, and for a substantial period of time since June 19, 1936, has

engaged in the business of buying, selling and distributing, flour, sugar, dried fruits, canned vegetables, canned fruits, canned fish, and other miscellaneous food commodities, all of which are hereinafter designated as food products. The stock in respondent corporation is wholly owned by respondent Gilmer A. Christian, Sr., and his wife, Mrs. Ann Mae Christian and their four sons, namely, respondent Gilmer A. Christian, Jr., respondent Bobby H. Christian, Jerry B. Christian and Wayne Christian.

PAR. 2. Respondent Gilmer A. Christian, Sr., is an individual residing at 3908 Tuxedo Road, N. W., Atlanta, Georgia. The respondent for a substantial period of time since June 19, 1936, has been engaged directly or indirectly with several firms and in various capacities in the purchase, sale and distribution of food products. For a period of time prior to June 19, 1936, he was an officer and active in the operation of Webb-Crawford Company of Athens, Georgia, and also since June 19, 1936, has owned and operated individually for a number of years a wholesale and retail grocery business which was conducted under the name and style of Athens Grocery Company of Athens, Georgia, which business and assets respondent transferred during 1940 to the name of his wife, Ann Mae (Mrs. Gilmer A.) Christian. The respondent in 1936 organized and conducted a mercantile brokerage business under the trade name of Christian Brokerage Company, with its principal office and place of business located in Atlanta, Georgia. This business was succeeded on June 5th, 1947, by a firm bearing the corporate name of Christian Brokerage Company, one of the respondents herein, of which corporation said respondent Gilmer A. Christian, Sr., is one of the principal stockholders and President of said respondent corporation. After becoming an officer, and at the present time and for some time past as President, respondent Gilmer A. Christian, Sr., has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its purchasing, distribution and sales policies.

PAR. 3. Respondent Gilmer A. Christian, Jr., is an individual residing at 1206 Peachtree Street, N. E., Atlanta, Georgia, and is one of the principal stockholders and Vice President of respondent corporation Christian Brokerage Company. Prior to being elected to his present office he was associated in business with his father, respondent Gilmer A. Christian, Sr., who during such period of time owned and operated Christian Brokerage Company (not incorporated). After becoming an officer of respondent corporation and at the present time, and for some time past as Vice President of the respondent corporation, respondent Gilmer A. Christian, Jr., has exercised and still exercises a substantial degree of authority and

control over the business conducted by said Company, including the direction of its purchasing, distribution and sales policies.

PAR. 4. Respondent Bobby H. Christian is an individual residing at 3908 Tuxedo Road, N. W., Atlanta, Georgia. Respondent is one of the principal stockholders and is secretary and treasurer of respondent corporation, Christian Brokerage Company. Prior to being elected to his present office he was associated in business with his father, respondent Gilmer A. Christian, Sr., who during such period of time owned and operated Christian Brokerage Company (not incorporated). After becoming an officer of respondent corporation, and at the present time, and for some time past as Secretary and Treasurer, respondent Bobby H. Christian has exercised and still exercises a substantial degree of authority and control over the business conducted by said Company, including the direction of its purchasing, distribution and sales policies.

PAR. 5. The corporate and individual respondents named in the caption hereof, and each of them, through said corporate respondent, for a substantial period since June 19, 1936, have been engaged, and are now engaged in the business of buying, selling and distributing food products by two separate and distinct methods, namely, and principally (1) as brokers, which is not challenged by the complaint herein, and (2) as buyers, for their own account who receive and accept brokerage payments on purchases made for their own account which is challenged by the complaint herein.

First: Respondent's principal 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

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any financial interests 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, for respondents' account, and respondents receive and accept, directly or indirectly, from the 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 purchases, are direct buyers and, as such, are traders for profit, purchasing and reselling such food products for their own account, 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, warehouse 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, either receiving a profit or accepting a loss thereon, as the case may be.

The respondents sell their food products to numerous buyers located principally in the State of Georgia. Such buyers are usually wholesalers and chain stores. Representative of respondents' buyers is the Athens Grocery Company, of Athens, Georgia. The respondents also sell substantial amounts of food products to buyers located in States other than the State of Georgia.

PAR. 6. Respondents, and each of them, have for a substantial period of time since June 19, 1936, made, and are now making, numerous and substantial purchases of food products from sellers located in States other than the State of Georgia, where respondents are located, and pursuant to which purchases such food products were and are shipped and transported in commerce by the various 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 and each of them also sold, distributed and transported and continue to sell, distribute and transport a sub-

stantial quantity of food products in commerce to customers outside of the State in which said respondents are located.

PAR. 7. Respondents, and each of them for a substantial period of time since June 19, 1936, in connection with the purchase and sale of food products in commerce 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 five above."

PAR. 8. The foregoing acts and practices of the respondents and each of them in receiving and accepting commissions, brokerage or other compensations 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 March 2, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging each of them with violation of the provisions of subsection (c) of section 2 of the aforesaid Clayton Act, as amended. After denial by the Commission of respondents' motion to dismiss the complaint, respondents filed their answer admitting all of the material allegations of the complaint and waiving all intervening procedure. The Commission having served upon the respondents its tentative decision herein, together with leave to show cause why such tentative decision should not be entered as its final decision, and the Commission, having denied respondents' motion for revision of said tentative decision, this proceeding regularly came on for final consideration before the Commission upon the aforesaid complaint and respondents' answer thereto; 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 Christian Brokerage Company is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at 185 Spring Street SW., Atlanta, Georgia. The respondent corporation is now engaged, and since June 5, 1947, has been engaged, in the business of buying, selling and distributing flour, sugar, dried fruits, canned vegetables, canned fruits, canned fish, and other miscellaneous food commodities, all of which are hereinafter designated as food products. The stock in respondent corporation is wholly owned by respondent Gilmer A. Christian, Sr., his wife, Mrs. Ann Mae Christian, and their four sons, namely, respondent Gilmer A. Christian, Jr., respondent Bobby H. Christian, Jerry B. Christian and Wayne Christian.

Respondent Gilmer A. Christian, Sr., is an individual residing at 3908 Tuxedo Road, N. W., Atlanta, Georgia. This respondent for many years has been engaged, in various capacities, in the purchase, sale, and distribution of food products. For a number of years immediately prior to 1940, this respondent owned and operated as an individual a wholesale and retail grocery business under the name and style of Athens Grocery Company, of Athens, Georgia, which business and assets he transferred during 1940 to the name of his wife, Ann Mae (Mrs. Gilmer A.) Christian. This respondent in 1936 organized and conducted a mercantile brokerage business under the trade name of Christian Brokerage Company, with its principal office and place of business located in Atlanta, Georgia. This business was conducted by said respondent in his individual capacity until June 5, 1947, at which time said business was transferred to the corporate respondent herein, Christian Brokerage Company. Respondent Gilmer A. Christian, Sr., is one of the principal stockholders and president of said respondent corporation. As president of respondent corporation, respondent Gilmer A. Christian, Sr., has exercised and now exercises a substantial degree of authority and control over the direction of the purchasing, distribution and sales policies of respondent corporation.

Respondent Gilmer A. Christian, Jr., an individual residing at 1206 Peachtree Street, N. E., Atlanta, Georgia, is one of the principal stockholders and vice president of respondent corporation, Christian Brokerage Company. Respondent Bobby H. Christian, an individual residing at 3908 Tuxedo Road, N. W., Atlanta, Georgia, is one of the principal stockholders and is secretary and treasurer of respondent corporation, Christian Brokerage Company. Prior to their present positions, both respondent Gilmer A. Christian, Jr., and respondent

Bobby H. Christian were associated in business with their father, respondent Gilmer A. Christian, Sr., who during such period of time owned and operated Christian Brokerage Company (not incorporated). In their capacities as officers of respondent corporation, both respondent Gilmer A. Christian, Jr., and respondent Bobby H. Christian for several years last past have exercised and now exercise a substantial degree of authority and control over the direction of the purchasing, distribution and sales policies of respondent corporation.

PAR. 2. Respondents for a substantial period of time have been and are now engaged in the business of buying, selling and distributing food products. Prior to the issuance of the complaint herein, respondents carried on their said business by two separate and distinct methods, namely, (1) as brokers, and (2) as buyers for their own account, upon which purchases they received and accepted brokerage fees and other compensation in lieu thereof. The complaint herein does not challenge any of respondents' practices in their capacities as brokers but does allege that their practice of receiving and accepting brokerage fees and other compensation in lieu thereof upon purchases for their own account is illegal.

PAR. 3. In connection with the respondents' business of buying for their own account as above described, they have made numerous and substantial purchases of food products from sellers located in States other than the State of Georgia, where respondents are located. The food products so purchased were shipped and transported in commerce by the various 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 had been resold by respondents. Respondents also distributed and transported a substantial quantity of food products from their place of business in the State of Georgia in commerce to their customers located in other States of the United States.

PAR. 4. Respondents, for a substantial period of time immediately prior to the date of the issuance of the complaint herein, in connection with the purchase and sale of food products in commerce as hereinabove described, have received and accepted, directly or indirectly, commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof from the various sellers from whom they purchased food products in commerce for their own account and for resale in the manner and under the circumstances set out as follows:

Respondents transmitted their own purchase orders for food products directly to the various sellers from whom they bought. Such sellers invoiced and shipped such food products directly to respond-

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ents, for respondents' account, and 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, were direct buyers and, as such, were traders for profit, purchasing and reselling such food products for their own account, 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 said products in their own warehouse and insured said products at their own expense and in their own name and for their own account against contingent loss or damage.

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, either receiving a profit or accepting a loss thereon, as the case might be.

The respondents sold their food products to numerous buyers located principally in the State of Georgia. Such buyers were usually wholesalers and chain stores. Representative of respondents' buyers was the Athens Grocery Company, of Athens, Georgia. The respondents also sold substantial amounts of food products to buyers located in States other than the State of Georgia.

CONCLUSION

The acts and practices of respondents in receiving or accepting commissions, brokerage fees or other compensation or allowance or discounts in lieu thereof from sellers from whom they purchased food products in commerce for their own account and for resale, in the manner and under the circumstances hereinabove found, were in violation 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 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 respondents' answer admitting all of the material allegations of fact therein and waiving all intervening procedure, and the Commission having made

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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 an Act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That respondent Christian Brokerage Company, a corporation, and its officers, and the individual respondents Gilmer A. Christian, Sr., Gilmer A. Christian, Jr., and Bobby H. Christian and the representatives, agents and employees of each of the respondents respectively, directly or through any corporate or other device, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, 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 their own account.

It is further ordered, That the respondents shall, within sixty (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
INTERNATIONAL PUBLISHERS SERVICE ET AL.

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

Docket 6006. Complaint, June 30, 1952—Decision, Sept. 9, 1952

Where a corporation and its president engaged in the magazine subscription business, who were charged under contracts with publishers or distributors of magazines with the obligation of forwarding to the latter subscriptions secured by their agents and the amount due—

- (a) Failed in many instances to forward subscriptions to publishers or distributors after obtaining full payment therefor;
- (b) Solicited and received subscriptions and payments therefor for magazines for which they had no authority to solicit;
- (c) Substituted magazines for those subscribed for without consent of the subscribers;
- (d) Solicited and received subscriptions and full payment therefor for magazines with full knowledge that delivery thereof either would not be made at all, or would be unreasonably delayed and intermittent;
- (e) Charged more than the regular subscription rate for magazines; and
- (f) Falsely represented, through statements by their representatives, that a survey was being conducted:

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

Before *Mr. William L. Pack*, hearing examiner.

Mr. George M. Martin for the Commission.

Mr. Jesse M. Harris, of Washington, D. C., for respondents.

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 International Publishers Service, a corporation, and Ralph D. Slater, individually and as President of International Publishers Service, hereinafter referred to as respondents, have 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: