

SEC. 2 (c) OF THE CLAYTON ACT

Docket C-1545. Complaint, June 13, 1969—Decision, June 13, 1969

Consent order requiring a Kansas City, Mo., produce wholesaler to cease making unlawful brokerage payments.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (15 U.S.C. § 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Scott Finks Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 203 Merchants-Produce Bank Building, Kansas City, Missouri 64106.

Respondent Scott Finks Co., Inc., has been and is engaged in business primarily as a wholesale seller, buying and reselling produce. This respondent purchases its produce from a number of suppliers located in Montana and Idaho. Its volume of business in the purchase and sale of such products is substantial, estimated to be in excess of \$1 million annually.

PAR. 2. Respondent W. S. Finks is the president and a director of Scott Finks Co., Inc., and together with his wife Mildred G. Finks, owns two thirds of the capital stock of said corporate respondent. Respondent W. S. Finks formulates, directs and controls the acts, practices and policies of said corporate respondent. His address is the same as that of the corporate respondent.

PAR. 3. In the course and conduct of their business for the past several years, respondents have purchased substantial quantities of produce in commerce, as "commerce" is defined in the Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Missouri in which respondents are located. Said respondents transport or cause such produce to be transported from the places of business of suppliers located in various other States of the United States to respondents who are located in the State of Missouri or to respondents' customers located in other States of the United States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase and resale of said produce by said respondents.

PAR. 4. Respondents sell their produce to purchasers through brokers and pay said brokers a brokerage fee or commission for their services in arranging such sales. In many instances respondents have also paid a brokerage fee, or granted an allowance in lieu thereof, to brokers purchasing for their own account.

PAR. 5. The acts and practices of respondents, in granting brokerage or a commission, or an allowance or discount in lieu thereof, to brokers buying for their own respective accounts, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsection (c) of Section 2 of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated subsection (c) of Section 2 of the Clayton Act, as amended, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Scott Finks Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 203 Merchants-Produce Bank Building, in the city of Kansas City, State of Missouri 64106.

Respondent W. S. Finks is president and a director of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Scott Finks Co., Inc., a corporation, and its officers, and W. S. Finks, individually and as President and a Director of Scott Finks Co., Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such 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 of produce to such buyer for his own account.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein 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.

Commissioner Elman not concurring.

IN THE MATTER OF

O.K. WOOL COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING
ACTS