

understandings, combinations and conspiracies therein referred to occurred more than 10 years ago under economic conditions which differed materially from those now prevailing; and

It further appearing that the record does not show that the rules, regulations and requirements designated in the amended complaint as "uniform standards of so-called fair commercial practices" and alleged to have been imposed or enforced upon all members of the furniture industry were distributed by any of the respondents after March 18, 1936, and does not clearly establish the extent to which said "standards" have been imposed or enforced upon the members of the industry since said date, or the extent to which the respondents' activities since 1936 have restricted or restrained interstate trade in furniture products or affected competition between and among the respondents or tended to create in the respondents a monopoly in the sale of furniture products; and

It further appearing that counsel in support of the complaint have in effect conceded that the allegations of the amended complaint with respect to the respondents' formulation, adoption and putting into operation of a so-called "Trade Relations Movement," one of the alleged purposes of which was to deprive employees of large industrial and commercial organizations of the opportunity of buying furniture and associated products from or through the facilities of their respective employees, have not been sustained by the greater weight of the evidence thereon; and

The Commission being of the opinion that in the circumstances the public interest will be better served by a dismissal of the amended complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as the result of such investigation, or otherwise:

Accordingly, it is ordered, That the respondents' appeal from the ruling of the hearing examiner be, and it hereby is, granted.

It is further ordered, That the amended complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. James A. Purcell*, trial examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Davies, Richberg, Beebe, Landa & Richardson, of Washington, D. C., for National Retail Furniture Association, its officers and members of the Board of Directors.

Mr. Leo J. Heer, of Chicago, Ill., also represented National Retail Furniture Association.

Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C., for The American Retail Federation, its officers and members of the Executive Committee and trustees.

Mr. Deneen A. Watson, of Chicago, Ill., for Illinois Federation of Retail Associations, its officers and members of the Board of Directors.

Miller, Daus & Schwenger, of Cleveland, Ohio, for Cleveland Retail Furniture Association, its officers, various members of the Executive Committee and members.

Halle, Haber, Berick & McNulty, of Cleveland, Ohio, also represented B. W. Marks and Mayer Marks Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for Trade Relations Council of Western Pennsylvania and Retail Merchants Association of Pittsburgh, its officers, various members of the Board of Directors and members.

Mr. Herbert C. Moore and *Mr. William C. Rogers*, of Baltimore, Md., for Retail Furniture Association of Baltimore, Inc., its officers and members of the Board of Directors.

Willard, Allen & Mulkern and *Russell, Plumer & Rutherford*, of Boston, Mass., for The Retail Trade Board of the Boston Chamber of Commerce, its officers, members of the "Governing Council", and members.

Hutchins & Wheeler, of Boston, Mass., also represented George Hansen and Chandler & Co., Inc.

Hemenway & Barnes, of Boston, Mass., also represented Jordon Marsh Co. and C. F. Hovey Co.

Choate, Hall & Stewart, of Boston, Mass., also represented R. H. White Corp.

Weil, Gotschal & Manges, of New York City, for New York Council on Retail Trade Diversion, Inc., various officers and members of the Executive Committee.

Gould & Wilkie, of New York City, for J. E. Davidson.

Marlow & Lincoln, of New York City, for John Wood.

Zelby & Burstein, of New York City, for Associated Furniture Dealers of New York, Inc., its officers and members of the Board of Governors.

Mr. Edwin S. Malmed, of Philadelphia, Pa., for Philadelphia Trade Relations Council, its officers and members of the Board of Directors.

Beaumont, Smith & Harris, of Detroit, Mich., for Retail Merchants Association of Detroit, its officers, members of the Board of Directors and members.

Mr. L. E. Oliphant, Jr., and *Mr. J. A. Lind*, of Chicago, Ill., also represented R. Hunsinger and Montgomery Ward & Co.

Goulston & Storrs, of Boston, Mass., also represented Sears, Roe-

buck & Co., Scott Furriers, Inc., Jays, Inc., Kay Jewelry Co., Lehb-
burger & Asher, Inc., Liquor Mart, Inc. and Raymond's, Inc.

Morrissey & Conley, of Providence, R. I., for Retail Trade Board of
Providence Chamber of Commerce, its officers, members of the Board
of Directors and members.

Swan, Keeney & Smith, of Providence, R. I., for Jesse L. Johnson.

MIL-KAY ORANGE CORP. OF AMERICA. Complaint, June 26, 1950.
Order, December 10, 1951. (Docket 5788.)

CHARGE: Advertising falsely or misleadingly and assuming or
using misleading trade or corporate name as to composition of prod-
uct and furnishing means and instrumentalities of misrepresentation
or deception through supplying false and misleading display cards;
in connection with the sale of a beverage concentrate, an acid solution
and a special color designated respectively as "Mil-K Fruit Base",
"Citric Acid Solution" and "Special Mil-K Botl Color", which it sells
and distributes to bottling plants for use in the preparation of a
carbonated beverage designated as "Mil-Kay".

COMPLAINT: Pursuant to the provisions of the Federal Trade Com-
mission Act and by virtue of the authority vested in it by said Act,
the Federal Trade Commission having reason to believe that Mil-Kay
Orange Corp. of America, a corporation, hereinafter referred to as
respondent, has violated the provisions of said Act and it appearing
to the Commission that a proceeding by it in respect thereof would
be in the public interest hereby issues its complaint, stating its charges
in that respect as follows:

PARAGRAPH 1. Mil-Kay Orange Corp. of America is a corporation
organized and existing under and by virtue of the laws of the State
of Missouri with its principal place of business located at 3012 Locust
Street, St. Louis, Mo.

PAR. 2. Respondent is now and for more than one year last past
has been engaged in the sale and distribution of a beverage concen-
trate, an acid solution and a special color designated respectively as
"Mil-K Fruit Base," "Citric Acid Solution" and "Special Mil-K
Botl Color," which it sells and distributes to bottling plants located
in various States of the United States for use in connection with the
preparation of a carbonated beverage designated as "Mil-Kay."

Respondent causes its said products when sold to be transported
from its place of business in Missouri to purchasers thereof in various
other States. When the beverage drink "Mil-Kay" has been pre-
pared by the use of respondent's said products, it is frequently shipped
by bottlers to retailers located in States other than the State in which
such shipments originated.

Respondent maintains and has maintained a course of trade in its

products between and among the various States of the United States and its volume of business has been substantial.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of various advertisements concerning the beverage "Mil-Kay" made by the use of its products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and caused the dissemination of advertisements concerning said beverage "Mil-Kay" by various means for the purpose of inducing and which would likely induce, directly or indirectly, the purchase of said beverage "Mil-Kay" in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the advertisements disseminated and caused to be disseminated as hereinabove set forth are the following counter display cards used by bottlers and retailers in advertising and promoting the sale of "Mil-Kay" as follows:

Drink MIL-KAY
It is Good For You

These words are printed upon a picturization of a whole orange.

A picture of a bottle of "Mil-Kay" bearing the following lettering:

MIL K BOTL
CONTAINS VITAMIN B,
REFRESHING
JUST SAY
MIL-KAY
THE VITAMIN B,
DRINK
INVIGORATING
MIL-KAY
SOLD IN BOTTLES ONLY

The picture of the bottle with its inscriptions is printed upon a picturization of an exploding orange.

PAR. 4. By means of the display cards bearing the picturizations thereon set out in Paragraph Three herein, respondent represented and placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the principal and characteristic ingredient of the beverage "Mil-Kay" is orange juice.

PAR. 5. The aforesaid statements and picturizations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Mil-Kay," while simulating the odor, appearance, and taste of a product composed principally of orange juice, derives its odor, appearance, and taste chiefly from imitation ingredients and is in fact an imitation orange product.

PAR. 6. The use by the respondent of the aforesaid false advertisements had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the picturizations contained therein are true and caused a portion of the purchasing public to purchase substantial quantities of the product "Mil-Kay" because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER closing case without prejudice follows:

The respondent in this proceeding having executed and tendered to the Commission a proposed stipulation of facts and agreement to cease and desist from the acts and practices alleged in the complaint to have been in violation of the Federal Trade Commission Act; and

The hearing examiner having recommended that said stipulation and agreement to cease and desist be accepted and that the case be closed without prejudice to the right of the Commission to reopen the same and resume trial thereof if the respondent again engages in said acts or practices; and

It appearing to the Commission that the complaint charges the respondent with having falsely represented, through the use of certain advertising display cards, that a beverage designated as "Mil-Kay, the Vitamin B₁ Drink," prepared from ingredients sold by the respondent, is composed principally of orange juice; and

It further appearing that prior to the issuance of the complaint the respondent abandoned the use of said advertising display cards, and that it has now deleted from its corporate name the word "Orange," thus negating any implication that may have been inherent in the use of said corporate name that the beverage "Mil-Kay, the Vitamin B₁ Drink," is composed principally of orange juice; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the proposed stipulation and agreement to cease and desist executed by the respondent on September 29, 1950, be, and it hereby is, accepted.

It is further ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. John L. York and *Mr. Jesse D. Kash* for the Commission.

Freedman & Levy, of Washington, D. C., for respondent.

BOND STORES, INC. Complaint, September 2, 1949. Order, January 10, 1952. (Docket 5697.)

CHARGE: Advertising falsely or misleadingly as to composition, manufacture or preparation, prices, source or origin and value of products, using misleading product name or title as to composition and source or origin of product and misrepresenting prices; in connection with the sale of men's, women's and children's clothing.

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 Bond Stores, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bond Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business at 380 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the retail sale of men's, women's and children's clothing, some of which clothing is and has been manufactured by respondent in factories owned and operated by it in New Brunswick, N. J., Rochester, N. Y., Buffalo, N. Y., Glen Falls, N. Y., and Meridian, Miss. Other clothing sold by respondent at retail is purchased by it from other manufacturers.

Respondent ships and has shipped the clothing manufactured by it and purchased by it from other manufacturers from its factories and from factories of other manufacturers from which respondent buys and has bought clothing to 68 retail stores owned and operated by it, which retail stores are located throughout the various States of the United States and in the District of Columbia. In many instances the retail stores to which such clothing is shipped by respondent are located in States other than the State in which such shipments have or had their origin.

Respondent's retail stores are engaged in the sale of clothing as above described and the shipment of certain thereof in commerce, as "commerce" is defined by the Federal Trade Commission Act, to purchasers located in States other than that in which such shipments have or had their origin, and to customers residing within the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said clothing in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its said clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondent made certain statements and representations in newspapers and circulars concerning, among other things, the quality and value of its clothing, the prices at which such clothing is offered for sale and the savings resulting from its purchase at such prices. Among and typical, but not all inclusive, of the statements and representations so made are the following:

(a) "Shetland and Genuine Kerrys made of imported wool . . ." "Cameron Worsteds" "Sizzling Bond Special men's suits \$50. quality pure wool Cameron Coverts \$37.75."

(b) "\$25.—Verified \$34.50 value" "Set your alarm! Get here early! Bond repeats a SELL-OUT MORE Rochester-Tailored top coats worth every cent of \$50.—\$37.75."

(c) "SPECIAL PURCHASE Usual price would be \$19.95—\$14.95"

(d) "Regularly \$10.50 triple decker bold look easy price \$8.95 Bootmaker hand finished . . ." "Today at Bond's $\frac{1}{3}$ off—leather-lined luxury zip coats! You save \$24.—\$45.95. Regularly \$69.95." "Today $\frac{1}{4}$ off. Bond slices \$20. from gabardine \$79.95 zip coats "59.95." "SALE! \$10.50 men's shoes \$8.95 Recognized \$10.50 quality."

(e) "Super-Quality broadcloth pajamas Bond-Priced below manufacturer's usual wholesale price! \$2.98."

PAR. 4. Respondent, through the use of the aforesaid statements appearing in the advertisements set out and quoted under the numbered subparagraphs above, represented:

(a) That the articles of clothing designated "Shetland," "Kerrys" and "Cameron" were made from fabrics imported from the Shetland Islands, Ireland, and Scotland, respectively.

(b) That the clothing offered for \$25 was of the value of \$34.50 and that the clothing being offered at \$37.75 was actually worth and was of the value of \$50.

(c) That the usual and regular price for the clothing offered at \$14.95 was \$19.95 and the difference between such prices represented a saving to the purchaser from the regular price.

(d) That the regular price for the shoes offered at \$8.95 was \$10.50 and that the difference between such prices represented a saving to the purchaser from the regular price; that said shoes were hand finished. That the regular price of the coats offered for \$45.95 and \$59.95 was \$69.95 and \$79.95, respectively, and that the differences represented savings to the purchaser of \$24 and \$20, respectively, from the regular prices.

(e) That the price of \$2.98 asked for pajamas was below the manufacturer's usual wholesale price.

PAR. 5. The statements in said advertisements are false, misleading and deceptive in the following respects:

(a) The articles of clothing designated "Shetland", "Kerrys" and "Cameron" were not made from fabrics imported from the Shetland Islands, Ireland, and Scotland, respectively.

(b) The clothing offered for \$25 was not of the value of \$34.50 and the clothing offered at \$37.75 was not actually worth and was not of the value of \$50, based upon the price of comparable merchandise sold by other retailers in the same trade territory.

(c) The usual and regular price for the clothing offered at \$14.95 was not \$19.95. In truth and in fact, respondent's regular selling price for such clothing did not exceed \$14.95 and a purchase at that figure did not result in a saving from respondent's regular price.

(d) The regular price for the shoes offered at \$8.95 was not \$10.50. In truth and in fact, respondent's regular selling price for said shoes did not exceed \$8.95 and a purchase at that figure did not result in a saving from respondent's regular price, and said shoes were not "hand finished." The regular prices of the coats offered for \$45.95 and \$59.95 were not \$69.95 and \$79.95, respectively. In truth and in fact, respondent's regular selling prices for said coats did not exceed \$45.95 and \$59.95, respectively, and a purchase of said coats at such prices did not result in savings in any amount from the regular prices.

(e) The price of \$2.98 asked for pajamas was not below the manufacturer's usual wholesale price.

PAR. 6. The use by respondent of the foregoing false, misleading and deceptive statements and representations, and others similar thereto, had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase the clothing sold by respondent through its retail stores.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COMPLAINT DISMISSED without prejudice by the following order:

It appearing to the Commission that counsel in support of the complaint and counsel for the respondent, Bond Stores, Inc., have reached an agreement on a proposed informal stipulation; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, without admitting having violated the Federal Trade Commission Act, not to use certain of the acts and practices complained of, as therein more particularly set forth; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way

prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement, and that settlement by stipulation of the matters here involved would not violate the Commission's stated policy of encouraging law observance through cooperation in certain types of cases where there has been no intent to defraud or mislead:

It is ordered, That the proposed stipulation and agreement executed by the respondent on November 20, 1951, be, and it hereby is, approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. Edward F. Downs for the Commission.

Goldberg & Grossman, of New York City, for respondent.

RICHMOND-CHASE Co., EDMUND N. RICHMOND, CHARLES M. O'BRIEN, BURNELL E. RICHMOND AND GEORGE A. RICHMOND. Complaint, August 6, 1948. Order, January 11, 1952. (Docket 5578.)

CHARGE: Discriminating in price through the paying or granting of commissions, brokerage, or other compensation, or allowances and discounts in lieu thereof, on sales of respondents' food products to direct buyers, in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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 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 Richmond-Chase Co. is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. The respondent corporation is engaged in the business of selling canned fruits and vegetables, processed dried fruits and frozen foods (all of which are hereinafter designated as "food products"), which it packs, processes, and cans at five canning plants which it operates in the State of California, one at

San Jose, the second at Stockton, a third at Mountain View, a fourth at Edenvale, and a fifth at San Leandro. The respondent corporation is a substantial factor in the distribution and sale of food products, selling approximately \$25-million worth of such commodities each year. Such sales are made to buyers located in various sections of the United States, Alaska, the Territory of Hawaii, the Island of Puerto Rico, and many foreign countries.

PAR. 2. Respondent Edmund N. Richmond is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now president of Richmond-Chase Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as president, respondent Edmund N. Richmond has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent Charles M. O'Brien is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now first vice president of Richmond-Chase Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as first vice president, respondent Charles M. O'Brien has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 4. Respondent Burnell E. Richmond is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now second vice president of Richmond-Chase Company and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time, and for some time past as second vice president, respondent Burnell E. Richmond has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 5. Respondent George A. Richmond is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now secretary-treasurer of Richmond-Chase Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time, and for some time past as secretary-treasurer, respondent George A. Richmond has exercised, and still

exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 6. Respondent corporation, as aforesaid, is now and has been since June 19, 1936, engaged in the business of packing, processing, selling, and distributing food products. Each of said individual respondents through said corporate respondent has likewise been engaged in said business. Said respondents and each of them in the course and conduct of their business as aforesaid have sold and distributed, and now sell and distribute their food products to buyers located in the several States of the United States and the Territories and insular possessions thereof and other places under the jurisdiction of the United States, including sales to buyers in the State of California. Said respondents cause such food products, when sold, to be transported from their places of business in California to the buyers thereof in the State of California and also to the customers of such buyers located in the several States of the United States, the Territories, insular possessions thereof, and other places under the jurisdiction of the United States. There has been since June 19, 1936, a constant current of trade and commerce conducted by each of said respondents in such food products between and among the various States of the United States, the Territories and insular possessions thereof and other places under the jurisdiction of the United States.

PAR. 7. Respondents, and each of them, through said respondent corporation, now sell and distribute, and since June 19, 1936, have sold and distributed, their food products in commerce through two separate and distinct methods: (1) By selling some such food products to buyers through brokers or agents; and (2) by selling some such food products directly to other buyers without the intervention of a broker or agent, and paying such buyers a commission or brokerage fee on such purchases.

First: The first method is by selling food products to buyers through brokers. A broker of food products, as considered herein, may be defined as a sales agent who negotiates the sale of food products for and on account of the seller as principal and whose compensation is a commission or brokerage fee paid by the seller. Such brokers act as respondents' sales agents, soliciting and obtaining orders for the respondents' food products at respondents' prices and on respondents' terms. Such brokers generally transmit such purchase orders to the respondents who thereafter invoice and ship the food products to respondents' customers. The respondents pay such brokers for their service in negotiating and making such sales for the respondents' account commissions or brokerage fees which are customarily based on a percentage of the invoice sales price of the food products sold.

Such brokers are not traders for profit and do not take title to nor have any financial interest in the products sold and neither make a profit nor suffer a loss on the transaction. This phase of respondents' business is not challenged herein.

Second: A second method, which is challenged by this complaint, is respondents' sale in the course of the aforesaid commerce of food products direct to buyers who are paid directly or indirectly commissions or brokerage fees on purchases made for their own account. All such buyers referred to herein are "direct buyers." In transactions between respondents and such buyers, the respondents do not use brokers. Some of such direct buyers purchase respondents' food products in the course of the aforesaid commerce for resale to their customers located in the several States of the United States. Other of respondents' direct buyers who are classified as "export brokers" purchase some of respondents' food products in the course of the aforesaid commerce for resale to their customers located in the several States of the United States and in Territories, insular possessions, or other places under the jurisdiction of the United States.

Such direct buyers generally transmit their own purchase orders for food products directly to the respondents. The respondents thereafter invoice and ship such food products directly to such buyers or to the customers of such buyers. Respondents collect the purchase price of the food products from the buyers and not from the buyers' customers. The respondents, among their several methods of sales, pay such buyers commissions or brokerage fees on such purchases, usually by deducting or allowing from the invoice price of the food products purchased an amount which is equal or approximately equal to the commissions or brokerage fees paid by the respondents to their brokers, as illustrated in the first method. On sales made by the respondents to buyers whom the respondents classify or who classify themselves as "export brokers," such commissions or brokerage fees are generally designated by respondents as "export discounts."

Contrary to the manner in which brokers operate (as described in the first method above), such buyers are traders for profit, purchasing and reselling such food products in their own names and for their own accounts, taking title to the food products and assuming all risk incident to ownership. Such resales are not made at the prices and on the terms dictated by respondents but at the prices and on the terms determined by the respective buyer who makes a profit or suffers a loss thereon, as the case may be. This phase of respondents' business is challenged by this complaint.

PAR. 8. The respondents, and each of them, since June 19, 1936, in connection with the sale of their food products in commerce, as illustrated in the second method set out in paragraph 7 herein, have been

