

NATIONAL DISTILLING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTIONS 2 AND 8 OF THE ACT OF CONGRESS, APPROVED OCTOBER 15, 1914.

Docket No. 26.—February 15, 1918.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of compressed yeast, for the purpose and with the effect of inducing purchasers of yeast to deal with it and to refrain from dealing with its competitors—

- (a) gave and offered to give to bakers and dealers compressed yeast in quantities larger than required for sample or demonstration purposes;
- (b) gave and offered to give to customers and employees of customers, gratuities, entertainment, and presents;
- (c) made contributions of money to bakers' associations, other than reasonable contributions for educational and scientific purposes relating to the use of compressed yeast;

(d) provided entertainment, including cigars, drinks, meals, theater tickets, and other forms of amusement, to bakers attending trade conventions; and

(e) delivered and offered to deliver to bakers and dealers quantities of yeast without making any immediate charge therefor, the price thereof being included and distributed in the price of yeast delivered under a contract then or subsequently made:

Held, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the National Distilling Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

I.

PARAGRAPH 1. That the respondent, National Distilling Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business in the city of Milwaukee, in said State, and is now, and at all times hereinafter mentioned was, engaged, among other things, in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States and the District of Columbia; that at all times hereinafter mentioned, the respondent in the manufacture and sale of yeast assumed and used the trade name "Red Star Compressed Yeast Co."

PAR. 2. That with the effect of stifling or suppressing competition in interstate commerce in the manufacture and sale of yeast, respondent is now and for more than a year last past has been systematically and on a large scale giving or offer-

ing to give to operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase from the respondent yeast without other consideration therefor, in quantities larger than required under the particular circumstances for proper sample or demonstrative purposes.

PAR. 3. That with the effect of stifling or suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically and on a large scale giving and offering to give to operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers as an inducement to purchase or contract to purchase yeast from the respondent and to employees of such users of yeast as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, gratuities such as liquor, cigars, meals, and other personal property, and in some instances money.

PAR. 4. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically and on a large scale giving and offering to give operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast as an inducement to such employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents including, among other things, liquors, cigars, silverware, and, in some instances, money.

PAR. 5. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, respondent is now and for more than a year last past has been systematically and on a large scale, providing entertainment for operative bakers using yeast, both its customers and prospective customers and for their em-

ployees as an inducement to purchase or contract to purchase yeast, or to influence the purchase of yeast from respondent; the said entertainment is furnished to such users of yeast and their employees by respondent's route drivers, selling agents, and other agents and employees; that such entertainment includes, among other things, money for entertainment purposes, meals, drinks, cigars, and theater tickets.

PAR. 6. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically contributing sums of money to funds raised by numerous associations of operative bakers known as "Master Bakers Association" to defray expenses of periodic conventions held by said associations in various parts of the United States; that such contributions range from \$10 to \$25, depending on the relative size and importance of the association, and are made to obtain and retain the patronage of said operative bakers.

PAR. 7. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, respondent is now and for more than a year last past has been systematically, and on a large scale, providing entertainment for operative bakers attending the association conventions referred to in paragraph 6 above; that said entertainment is furnished by agents of the respondent to said conventions and is provided to obtain and retain the patronage of said operative bakers and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 8. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically and on a large scale providing entertainment to operative bakers using yeast, both its customers and its prospective customers; said entertainment is furnished to said users of yeast by its representatives at its principal distributing centers for the purpose of obtaining and retaining the patronage of said operative bakers and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 9. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically delivering and offering to deliver to operative bakers using yeast, as an inducement for said users to continue or to enter into contracts of purchase of yeast from the respondent, yeast for various purchasers without any immediate charge therefor, the price of such yeast so delivered being included and distributed in the price of yeast delivered during the term of contract then in existence or made subsequent to the period of such delivery of yeast for which no immediate charge is made.

PAR. 10. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically making and offering to make to operative bakers using yeast as an inducement for said users to continue or enter into contracts for purchase of yeast from the respondent, payments of cash, the amount of said cash payments being included and distributed in the price of yeast delivered under a contract entered into at the time of said payment.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the National Distilling Co., hereinafter referred to as the respondent, has violated and is violating the provisions of section 2 and section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PAR. 1. That the respondent, National Distilling Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business in the city of Milwaukee, in said State, and is now, and at all times hereinafter mentioned, engaged, among other things, in manufacturing

and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States and the District of Columbia; that at all times hereinafter mentioned, the respondent in the manufacture and sale of yeast assumed and used the trade name Red Star Compressed Yeast Co.

PAR. 2. That the respondent, National Distilling Co., for several years last past in the course of interstate commerce in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of yeast, which yeast is sold for use, consumption, or resale within the United States or the Territories thereof, or the District of Columbia, with the effect that such discrimination may be to substantially lessen competition or tend to create a monopoly in the yeast industry.

PAR. 3. That the respondent, National Distilling Co., for several years last past in the course of interstate commerce in violation of section 3 of the Clayton Act, has sold and made contracts for sale, and is now selling and making contracts for sale of large quantities of yeast for use, consumption, and resale within the United States, and has fixed and is now fixing the price charged therefor, or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchasers thereof shall not use or deal with the goods, wares, merchandise, supplies, or commodities of a competitor or competitors of respondent with the effect that such sales and contracts for sales for such conditions, agreements, or understandings may be and is to substantially lessen competition and to tend to create a monopoly in the yeast industry.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, the National Distilling Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade

Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by August Bergenthal, its secretary, and having stipulated of record that the Commission might forthwith proceed to make its findings and order disposing of this proceeding, the Commission makes this report and findings as to the facts and conclusions.

(1) That the respondent, National Distilling Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business in the city of Milwaukee, State of Wisconsin.

(2) That for more than three years last past the respondent has been engaged in the business of manufacturing, shipping, marketing, and selling compressed yeast; that in the conduct of said business the respondent has manufactured such yeast in the cities of Milwaukee and Cudahy, county of Milwaukee, State of Wisconsin, and transported same into and through various States and Territories of the United States and the District of Columbia, for use and resale therein, and that in the marketing and selling of such yeast, the respondent, its officers and agents, have sold and made contracts of sale for such yeast in the State of Wisconsin and numerous other States and Territories of the United States and District of Columbia in direct competition with manufacturers of and dealers in such yeast.

(3) That the manufacture, sale, distribution, and marketing of compressed yeast is a matter of vital importance to the public.

(4) That the respondent, for more than three years last past has systematically given, and offered to give, compressed yeast without any consideration therefor, and in quantities larger than required under the particular circumstances for proper sample or demonstrative purposes, to operative bakers and dealers using such yeast, both its customers and its prospective customers, for the purpose of obtaining and retaining their patronage, and that the effect of such practices has been, and is to induce the purchasers

of yeast to refrain from dealing with competitors of respondent.

(5) That the respondent for more than three years last past has systematically given, and offered to give, gratuities, consisting of liquor, cigars, meals, money, and other personal property to operative bakers and dealers using such yeast, both its customers and its prospective customers, and their employees, for the purpose of obtaining and retaining the patronage of such operative bakers, and that the effect of such practices has been, and is, to induce purchasers of yeast to refrain from dealing or contracting to deal with competitors of respondent.

(6) That the respondent for more than three years last past on a large scale has given and offered to give Christmas presents and special holiday presents consisting of cigars, liquors, silverware, money, and other personal property to operative bakers and dealers using yeast, both its customers and its prospective customers and their employees, for the purpose of obtaining and retaining the patronage of such operative bakers, and that the effect of such practice has been, and is, to induce purchasers of compressed yeast to refrain from dealing or contracting to deal with competitors of respondent.

(7) That for more than three years last past, the respondent, through and by its servants, agents, and employees, has systematically provided entertainment consisting of theater tickets, meals, drinks, automobile rides and money for amusement purposes for operative bakers and dealers using compressed yeast, both its customers and its prospective customers and their employees, for the purpose of obtaining the patronage of such operative bakers, and that the effect of such practice has been, and is, to induce purchasers of compressed yeast to refrain from dealing or contracting to deal with competitors of respondent.

(8) That the respondent for more than three years last past has been systematically contributing sums of money to funds raised by numerous associations of operative bakers, known as "Master Bakers' Association", to defray the expenses of periodic conventions held by said associations in various parts of the United States, with the purpose of obtaining and retaining the patronage of said operative

bakers; that such contributions in the past three years have been as follows:

Date.	Location.	Amount.
1915.		
Mar. 8	Indianapolis.....	\$25
29	Philadelphia.....	30
Apr. 2	Oklahoma State.....	25
13	Cedar Rapids.....	20
Aug. 10	Oshkosh.....	10
23	Kentucky.....	25
Oct. 15	Wisconsin.....	50
		185
1916.		
Apr. 25	Oklahoma.....	25
May 2	Texas.....	25
		50
1917.		
May 8	Peoria.....	25
22	Trans-Mississippi.....	25
Sept. 4	Wisconsin.....	50
		100
		335

(9) That for more than three years last past numerous associations of operative bakers known as "Master Bakers Associations" have held periodic trade conventions in various parts of the United States, and the respondent, by and through its servants, agents, and employees, has systematically furnished entertainment consisting of cigars, drinks, meals, theater tickets, automobile rides, and other forms of amusement for operative bakers and dealers using compressed yeast, both its customers and prospective customers attending said conventions, with the purpose of obtaining their patronage, and that the result of such practice has been and is to induce purchasers of such yeast to refrain from dealing or contracting to deal with competitors of respondent.

(10) That for more than three years last past respondent has systematically delivered and offered to deliver to operative bakers and dealers using compressed yeast large quantities of such yeast for various purposes without making any immediate charge therefor, the price of such yeast so delivered being included and distributed in the price of yeast delivered during the time of the contract then in existence, or made subsequent to the period of such delivery of yeast for which

no immediate charge is made, and that such deliveries and offers to deliver compressed yeast have been and are made with the purpose of inducing users of such yeast to continue or enter into contracts of purchase for such yeast from respondent and that the result of such practice has been and is to compel users of such yeast to refrain from entering into such contracts of purchase with competitors of respondent.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 4, 5, 6, 7, 9, and 10 and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, National Distilling Co., having entered its appearance by A. Bergenthal, its secretary, and having stipulated of record that the Commission may forthwith proceed to make its findings as to the facts in this proceeding and issue its order disposing of the same, and the Commission, on the date hereof, having made and filed a report containing its findings as to the facts, and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Therefore,

It is ordered, that the respondent, National Distilling Co., its officers and agents, cease and desist from:

I. Giving, or offering to give, compressed yeast without any consideration therefor, to operative bakers, both its customers and prospective customers, in quantities larger than required under the particular circumstances for proper sample or demonstrative purposes.

II. Giving, or offering to give, operative bakers, using compressed yeast, both its customers and prospective customers, their agents, servants, and employees, with the intent, purpose, or effect of obtaining and retaining the patronage of said operative bakers and inducing them to refrain from dealing, or contracting to deal, with competitors of respondent, the following:

(a) Gratuities such as liquors, cigars, meals, money, or other personal property,

(b) Christmas presents and holiday presents of any kind or nature whatsoever,

(c) Any and all entertainment, including theater tickets, meals, drinks, automobile rides, and other forms of like amusement,

(d) Entertainment at "Master Bakers' Association" trade conventions, and meetings of similar character, including cigars, drinks, meals, theater tickets, automobile rides, and other forms of like amusement.

III. Delivering, or offering to deliver, quantities of compressed yeast to operative bakers without making any immediate charge therefor, and including and distributing the price for the same in the price of yeast delivered during the term of a contract then in existence or made subsequent to the period of delivery of yeast for which no immediate charge is made, for the purpose of inducing said operative bakers to purchase or contract to purchase yeast from the respondent.

FEDERAL TRADE COMMISSION

v.

S. S. ROSENBAUM, DOING BUSINESS AS RELIANCE
VARNISH WORKS.