

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF ALLEGED VIOLATION OF SECTION 3 OF THE ACT OF CONGRESS, APPROVED OCTOBER 15, 1914.

Docket No. 6.—April 8, 1918.

SYLLABUS.

Where a manufacturer selling approximately 90 per cent of the compressed yeast used by bakers in the United States—

I.

- (a) systematically gave and offered to give yeast to bakers, in quantities larger than required for proper sample or demonstration purposes, as an inducement to purchase its yeast;
- (b) systematically gave and offered to give to bakers as an inducement to purchase its yeast (1) gratuities, including liquors, cigars, meals, and other personal property, and in some instances money; (2) Christmas and holiday presents, including liquors, cigars, silverware, and in some instances money, and (3) entertainment, including meals, drinks, cigars, theater tickets, other personal property, and in some instances money;
- (c) systematically gave and offered to give to employees of users of yeast gratuities, Christmas and holiday presents, and entertainment, such as are enumerated above, as an inducement to influence their employers to purchase its yeast;
- (d) systematically made contributions of money to bakers' associations, other than reasonable contributions for educational and scientific purposes relating to the use of compressed yeast;

- (e) systematically provided entertainment, including cigars, drinks, meals, theater tickets, automobile rides, and other forms of amusement, to bakers attending trade conventions, directly and through its sales agents at its principal distributing centers, for the purpose of obtaining and retaining the patronage of such bakers;
- (f) systematically delivered and offered to deliver to bakers quantities of yeast, and paid and offered to pay cash, as an inducement to renew, or to enter into, contracts to purchase yeast from it, the value thereof being included and distributed in the price of yeast delivered under a contract then or subsequently made;
- (g) occasionally removed and attempted to remove from the possession of bakers trial samples of yeast given them by competitors by
 - (1) substituting or attempting to substitute its yeast therefor, or
 - (2) by purchasing or attempting to purchase the same;
- (h) occasionally purchased or attempted to purchase, substituted or offered to substitute, its yeast for competitors' yeast bought by and in the possession of bakers;
- (i) occasionally followed competitors' representatives with the object of hindering and embarrassing them in the transaction of their business;
- (j) misrepresented to the trade the methods of its competitors in business; and
- (k) concealed its control of and affiliation with a certain yeast company, and permitted it to be held out and advertised as independent:

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

II.

- (l) deviated from an established scale of prices, reducing the same to meet competition and, when such reduction did not result in retaining or obtaining the business, made further reductions to prices below those offered by competitors, with the effect that competition in the sale of yeast might be and was substantially lessened:

Held, That such discriminations in price, so far as admitted by said manufacturer to be below the prices of competitors, constituted a violation of section 2 of the act approved October 15, 1914.

III.

- (m) entered into long-time contracts with customers providing in terms that such customers were to purchase from such manufacturer all the yeast required by them, and after the issuance of complaint by the Federal Trade Commission, revised such contracts eliminating the clause requiring them to purchase from such manufacturer their entire requirements; and
- (n) where it was proven that customers under the new contract declined to purchase from a competitor on the ground that they were

under contract to purchase the yeast of such manufacturer, with the effect that competition in the sale of yeast had been and was substantially lessened:

Held, That such contract constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it that the Fleischmann Co., hereinafter referred to as 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:

PARAGRAPH 1. That the respondent, Fleischmann Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. 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 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 demonstration purposes.

PAR. 3. 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, 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 said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents; that said presents are charged on the respondent's books of account to a "Christmas and special holiday" account, and include, 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, the 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 employees, as an inducement to purchase or contract to purchase yeast, or to influence the purchase of yeast from respondent; that said entertainment is furnished to said users of yeast, and their employees, by respondent's route drivers and selling agents; that the expense of said entertainment is charged on the respondent's books of account as "Route expenses," and that said 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' Associations," to defray expenses of periodic conventions held by said associations in various parts of the United States; that such contributions range from \$10 to \$1,000, dependent on the relative size and importance of the association, and are charged on the books of account of the respondent as "Convention expenses," 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, the 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 sent to said conventions, and the expense thereof is charged on the books of the respondent as "Convention expenses," 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 prospective customers; that such entertainment is furnished to said users of yeast at the respondent's principal distributing centers by its representatives known as "Resident sales agents"; that the expense of such entertainments is charged on the books of account of the respondent as "Sales agents expense," and is made to obtain and retain 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 periods 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 a 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 of 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 at the time of said payment of cash.

PAR. 11. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent has unfairly interfered with its competitors in the conduct of their respective businesses, more particularly as follows:

(a) By removing or attempting to remove competitors' trial sample yeast from the possession of users of yeast, by substituting or attempting to substitute its own yeast therefor, or by purchasing or attempting to purchase from said users of yeast such competitors' trial samples;

(b) by purchasing or offering to purchase, or by substituting or offering to substitute, its own yeast for competitors' yeast in the hands of competitors' customers; and

(c) by following and trailing the delivery and sales agents of its competitors as said agents make the rounds of said competitors' customers and prospective customers, with the object of hindering and embarrassing such agents in the sale and delivery of yeast and the transaction of business incident thereto.

PAR. 12. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, certain agents and representatives of respondents have, at divers times, made misrepresentations to the trade as to the methods pursued by its competitors in the transaction of their business.

PAR. 13. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent has concealed its control of, and affiliation with, a yeast company, to wit, the Bakers & Consumers' Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal office and place of business in the city of New York, State of New York; and respondent has permitted the said company to be held out and advertised as wholly independent and without connection with the respondent, and has directed the efforts and business of said company to the acquisition of certain trade which respondent can not acquire or certain trade which respondent is in danger of losing.

II.

And the Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Fleischmann Co., hereinafter referred to as respondent, has violated and is violating the provisions of 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 further complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fleischmann Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent, Fleischmann Co., for several years last past, in the course of interstate commerce, in vio-

lation 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 in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondent, and that the effect of such sales and contracts for sale, or such conditions, agreements, or understandings may be and is to substantially lessen competition and to tend to create a monopoly in the yeast industry.

SUPPLEMENTARY COMPLAINT.

III.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Fleischmann Co., hereinafter referred to as respondent, has violated and is violating the provisions of section 2 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 further complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fleischmann Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent, Fleischmann 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, and that the effect of such discrimination may be to substantially lessen competition or 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 complaints herein, wherein it is alleged that it had reason to believe that the above-named respondent, the Fleischmann 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 has been, and now is, discriminating in prices in the course of interstate commerce between different purchasers of compressed yeast in the same or different localities, and has been, and now is, making contracts in the course of interstate commerce, for the sale of compressed yeast to operative bakers on the condition, agreement, or understanding that said operative bakers shall not purchase compressed yeast from competitors of respondent, in violation of sections 2 and 3, respectively, of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that a proceeding by it in respect to the allegations herein set forth, would be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by Henry A. Wise, its attorney, and having stipulated of record that the Commission might forthwith proceed to make its findings and order disposing of these proceedings, the Commission makes this report and findings as to the facts, and conclusions.

FINDINGS AS TO THE FACTS.

I.

PARAGRAPH 1. That the Fleischmann Co. is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent has, for more than a year last past, systematically given and offered to give, to operative bakers using compressed yeast, both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase from respondent, yeast, without other consideration therefor, in quantities larger than required under the particular circumstances for proper sample or demonstration purposes.

PAR. 3. That the respondent has, for more than a year last past, made a systematic practice of giving and offering to give to operative bakers using compressed 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 liquors, cigars, meals, and other personal property, and in some instances, money.

PAR. 4. That the respondent has, for more than a year last past, systematically given and offered to give to operative bakers using compressed 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, Christmas presents and special holiday presents, such as liquors, cigars, silverware, and in some instances, money.

PAR. 5. That the respondent has, for more than a year last past, systematically provided entertainment for operative bakers using compressed yeast, both its customers and pros-

pective 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, and that such entertainment includes, among other things, meals, drinks, cigars, theater tickets, other articles of personal property, and in some instances money.

PAR. 6. That the respondent has, for more than a year last past, systematically made contributions of sums of money to funds raised by numerous associations known as "bakers' associations," composed of operative and boss bakers, both its customers and prospective customers, ranging from \$10 to \$1,800, depending on the relative size and importance of the association, to defray expenses of periodic conventions held by said associations in various parts of the United States; that such contributions were and have been made for the purpose of obtaining and retaining the patronage of said operative bakers; that in the year 1915 the aggregate amount of such contributions was \$26,601.45; that in the year 1916 the aggregate amount of such contributions was \$26,456.43; that in the year 1917 the aggregate amount of such contributions was \$17,034.67; that such sums were distributed throughout the various States and Territories of the United States; and that such contributions have operated in the interest of the good will of respondent's business.

PAR. 7. That the respondent is now, and for more than a year last past has been, systematically providing entertainment to operative and boss bakers using compressed yeast, both its customers and prospective customers, attending the association conventions referred to in paragraph 6 above; that said entertainment is furnished by agents of respondent sent to said conventions; that the expense thereof is charged on the books of respondent as "convention expenses," and is provided to obtain and retain the patronage of said operative and boss bakers, and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 8. That the respondent has, for more than a year last past, systematically provided entertainment to operative bakers using compressed yeast, both its customers and pro-

spective customers; that such entertainment was furnished to said users of yeast at the respondent's principal distributing centers by its representatives known as "sales agents"; that the expense of such entertainments is charged on the books of account of the respondent as "sales agents' expenses," and is made to obtain and retain the patronage of said operative bakers, and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 9. That the respondent has, for more than year last past, systematically delivered and offered to deliver to operative bakers using compressed yeast, as an inducement for said users of yeast to continue, or to enter into, contracts of purchase of yeast from the respondent, yeast for various periods without any immediate charge therefor, the price of such compressed yeast so delivered being included and distributed in the price of yeast delivered during the term of a 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 the respondent has, for more than a year last past, systematically made and offered to make to operative bakers using yeast, as an inducement for said users of yeast to continue, or to enter into, contracts of 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 at the time of said payment of cash.

PAR. 11. (a) That occasionally respondent's representatives have removed, or attempted to remove, competitors' trial samples of compressed yeast from the possession of operative bakers using yeast by substituting or attempting to substitute respondent's yeast therefor, or by purchasing or attempting to purchase from said operative bakers such competitors' trial samples.

(b) That occasionally respondent's representatives have purchased or offered to purchase, or have substituted or offered to substitute, respondent's compressed yeast for competitors' compressed yeast in the hands of competitors' customers.

(c) That occasionally respondent's representatives have followed up competitors' representatives as the latter made

the rounds of competitors' customers and prospective customers, with the object of hindering and embarrassing competitors' agents in the sale and delivery of yeast, and the transaction of business incident thereto.

PAR. 12. That at divers times certain agents and representatives of the respondent have made misrepresentations to the trade as to the methods pursued by its competitors in the transaction of said competitors' business.

PAR. 13. That the respondent for more than a year last past has concealed its control of, and affiliation with, a yeast company, to wit, the Bakers & Consumers Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the city of New York, State of New York; that the respondent has permitted the said Bakers & Consumers Compressed Yeast Co. to be held out and advertised as wholly independent and without connection with the respondent, and has directed the efforts and business of said Bakers & Consumers Compressed Yeast Co. to the acquisition of certain trade which respondent was in danger of losing.

II.

PARAGRAPH 1. That from October 1, 1915, until the present time, the respondent has sold practically 90 per cent of the compressed yeast used by commercial bakers, including hotels, restaurants, and institutions, in the United States, and that upwards of 30 per cent of such bakers have been under contract with respondent for the purchase of compressed yeast, which amounts to approximately 75 per cent of the bakers' yeast sold by the respondent, and that from October 1, 1905, until May 1, 1917, the contract used by respondent was in the form as follows:

Form 883 (2 '13 10M).

The undersigned purchaser hereby agrees, in consideration of the reduced price at which the goods named herein are sold, to buy of The Fleischmann Co., which agrees to sell to the undersigned purchaser upon the terms and conditions hereinafter stipulated, all the compressed yeast required to be used for own and sole use at the baking establishment of the undersigned purchaser for and during the term of year ending 191 , at the rate of thirty-five cents per pound delivered by the seller on terms of cash, The Fleisch-

mann Co., on the faithful performance of the above condition on the part of the purchaser, agreeing to give a discount of cents () per pound on every pound of yeast bought by them under and pursuant to the terms and conditions of this contract, such discount to be paid to the undersigned purchaser about once a month.

And it is further mutually agreed that The Fleischmann Co., shall not be held responsible for any failure to sell or deliver said compressed yeast, if such failure be occasioned by strikes or by any other cause beyond their control.

Dated ----- 191 .

----- Purchaser.

In the presence of:

Agreed to this ---- day of ----- 191---

THE FLEISCHMANN Co., Seller.

That approximately 8,032 of such contracts are still in force; that on May 1, 1917, the respondent adopted a new form of contract, which is as follows:

Form 883 (10 '17 GM).

The undersigned purchaser hereby agree , in consideration of the price at which the goods named herein are sold, to buy of The Fleischmann Co., which agrees to sell to the undersigned purchaser upon the terms and conditions hereinafter stipulated, such quantities of Fleischmann's compressed yeast as may require for own and sole use at the baking establishment of the undersigned purchaser for and during the term of year ending 191 , at the rate of thirty-five cents per pound delivered by the seller on terms of cash, The Fleischmann Co., on the faithful performance of the above condition on the part of the purchaser, agreeing to give a discount of cents () per pound on every pound of yeast bought of them under and pursuant to the terms and conditions of this contract, such discount to be paid to the undersigned purchaser about once a month.

And it is further mutually agreed that The Fleischmann Co. shall not be held responsible for any failure to sell or deliver said compressed yeast, if such failure be occasioned by strikes or by any other cause beyond their control.

Dated at ----- 191 .

Purchaser.

In presence of:

Agreed to this ---- day of ----- 191 .

THE FLEISCHMANN Co., Seller.

That such contracts were entered into for a period of from one to five years; that since May 1, 1917, contracts entered into are of the form of contract last mentioned, and repre-

sent 3,147 commercial bakers, hotels, restaurants, and institutions; that in making all of such contracts, respondent has entered into the same in the hope and with the expectation that the baker making such contract would live up to the same, and it is the fact that 90 per cent of such bakers entering into both forms of such contracts have lived up to the same and have taken their entire requirements of yeast from the respondent; that there are approximately four thousand of respondent's customers who are now under contract in the form adopted May 1, 1917, as aforesaid. That of respondent's customers east of the Mississippi River under contract with respondent as aforesaid, substantially all of them have been solicited by agents of competitors for the purpose of having said customers disregard their contracts and purchase compressed yeast from respondent's competitors; that in a large number of instances where customers under contract have been so solicited they have declined to purchase yeast from competitors of respondent, giving as their reason that they were under contract with respondent.

III.

PARAGRAPH 1. That for more than one year last past respondent has sold compressed yeast to operative bakers on the basis of—

	Cents per pound.
Bakers using 500 pounds or more, per week (which price is called the wholesale price; there have been and are a few customers who used or use from 4,000 to 12,000 pounds per week who have received, or are receiving, a discount of from 2% to 5% from this price for cash payment, of monthly bills, within 10 days) -----	16
Bakers using from approximately 300 to 500 pounds per week..	17
Bakers using approximately from 200 to 300 pounds per week..	18-19
Bakers using approximately from 100 to 200 pounds per week..	19-20
Bakers using approximately from 60 to 100 pounds per week..	21-22½
Bakers using approximately from 30 to 60 pounds per week...	25
Bakers using under 25 pounds per week.....	25-25½

largely depending on remoteness of point of delivery. The above figures are the figures applying in the territory of the United States east of the Rocky Mountains.

That owing to competition in various localities it has deviated from such basic prices in order to retain the patronage of its customers by reducing its prices to them to meet the price of its competitors, and in the event that such reduction in price did not result in the retention of the business of said customers, it has, in a number of cases, reduced its prices to a price below that offered to such customers by such competitors; and in many cases where, as a result of such competition, its customers have abandoned their contracts with respondent, it has reduced its prices to such customers to meet the price of such competitors to obtain said customers' business.

CONCLUSIONS.

That the methods of competition, as set forth in the foregoing findings as to the facts in Division I, paragraphs 2 to 13, inclusive, and each and all of them are, in the circumstances therein set forth, 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."

That the contracts for sale used by the respondent, as set forth in the foregoing findings as to the facts, in Division II, paragraph 1, are made on the condition, agreement, or understanding that the purchaser shall purchase his entire requirement of compressed yeast from respondent and shall not purchase compressed yeast from a competitor, and the effect thereof may be to substantially lessen competition or tend to create a monopoly in the sale of compressed yeast; that the use of such contracts is in violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

That the discriminations in prices in so far as they are admitted by respondent to be below the prices offered by its competitors, as set forth in the foregoing findings as to the facts in Division III, paragraph 1, are not made on account of differences in the grade, quality or quantity of the com-

modity sold, nor do such discriminations make due allowance for difference in the cost of selling or transportation, and are not made in good faith to meet competition, and the effect of such discriminations may be to substantially lessen competition or tend to create a monopoly in the sale of compressed yeast; that such discriminations are made in violation of section 2 of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaints herein, and the respondent, the Fleischmann Co., having entered its appearance by Henry A. Wise, its attorney, and having stipulated of record that the Commission may forthwith proceed to make its findings as to the facts in these proceedings, 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," and has violated sections 2 and 3, respectively, of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof. Therefore

It is ordered, That the respondent, the Fleischmann Co., its officers and agents, cease and desist from—

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

(2) Giving, or offering to give, operative bakers using compressed yeast, both its customers and prospective customers and its competitors' customers and prospective customers, their agents, servants, and employees, as an induce-

ment for such operative bakers to purchase or contract to purchase yeast from the respondent, gratuities such as liquors, cigars, meal and other personal property, or money.

(3) Giving, or offering to give, operative bakers using compressed yeast, both its customers, prospective customers, and its competitors' customers and prospective customers, their agents, servants, and employees, as an inducement for said operative bakers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents, such as liquor, cigars, silverware, or money.

(4) Providing entertainment, including among other things, meals, drinks, cigars, theater tickets, or money, for operative bakers using compressed yeast, both its customers and prospective customers, their agents, servants, and employees, as an inducement for said operative bakers to purchase, or contract to purchase, yeast from the respondent.

(5) Making contributions of sums of money to funds raised by associations known as "bakers associations," composed of operative and boss bakers, both its customers and prospective customers, for the purpose of obtaining and retaining the patronage of said operative bakers: *Provided, however,* That nothing in this paragraph shall be construed to prevent respondent from making reasonable contributions to such associations for educational and scientific purposes as relates to the use of compressed yeast.

(6) Providing entertainment, including, among other things, cigars, drinks, meals, theater tickets, and automobile rides, to operative and boss bakers using compressed yeast, both its customers and prospective customers, attending the association conventions referred to in paragraph 5 above, for the purpose of obtaining and retaining the patronage of said operative and boss bakers.

(7) Providing entertainment, including among other things, cigars, drinks, meals, theater tickets, and automobile rides, to operative bakers using compressed yeast, both its customers and prospective customers, at the respondent's principal distributing centers by its representatives known as "sales agents," for the purpose of obtaining and retaining the patronage of said operative bakers: *Provided, however,* That nothing in this paragraph shall be construed to prohibit respondent from furnishing reasonable entertainment to op-

erative bakers visiting its manufacturing plants and laboratories.

(8) Delivering, or offering to deliver, as an inducement to operative bakers using a compressed yeast to continue or to enter into contracts of purchase of yeast from respondent, quantities of such yeast to said 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.

(9) Making, or offering to make, as an inducement for operative bakers using compressed yeast to continue or to enter into contracts of 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 of cash.

(10) (a) Removing, or attempting to remove, competitors' trial samples of compressed yeast from the possession of operative bakers using yeast, by substituting or attempting to substitute respondent's yeast therefor, or by purchasing or attempting to purchase from said operative bakers, such competitors' trial samples.

(b) Purchasing, or offering to purchase, or substituting or offering to substitute respondent's compressed yeast for competitors' compressed yeast in the possession of competitors' customers.

(c) Following up competitors' representatives as the latter make their rounds of their customers and prospective customers with the object of hindering and embarrassing competitors' agents in the sale or delivery of compressed yeast and the transaction of business incident thereto.

(11) Making misrepresentations to the trade as to the methods pursued by respondent's competitors in the transaction of said competitors' business.

(12) Concealing its control of, and affiliation with, a yeast company known as the Bakers & Consumers Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its

principal office and place of business in the city of New York, State of New York, and permitting said Bakers & Consumers Compressed Yeast Co. to be held out and advertised as wholly independent and without connection with the respondent, or directing the efforts and business of said Bakers & Consumers Compressed Yeast Co. to the acquisition of certain trade which respondent is in danger of losing.

(13) Making a sale or contract for sale of compressed yeast for use, consumption, or resale within the United States, or any Territory thereof, or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall purchase his entire requirement of compressed yeast from the Fleischmann Co. and shall not purchase compressed yeast from a competitor or competitors of said Fleischmann Co.

(14) Discriminating, either directly or indirectly, in territories where the Fleischmann Co. and its competitors are doing business, in price between different purchasers of compressed yeast, which commodity is sold for use, consumption, or resale within the United States, or any Territory thereof, or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where such discriminations in prices, if made, would be below the price or prices of a competitor or competitors of the Fleischmann Co. in such competitive territory.