

Complaint

IN THE MATTER OF

SHEFFORD CHEESE COMPANY, INC.

COMPLAINT, MEMORANDUM OPINION, AND ORDER CLOSING CASE IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 2936. Complaint, Sept. 30, 1936—Order, Oct. 30, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT. SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—WHERE PRESUMPTION OF REASONABLENESS; COMPETITIVE INJURY NEITHER INTENDED NOR EVIDENT; TO MEET DISCOUNTS, ETC., OF COMPETITORS; AND OTHER DISCOUNT EVENTUALLY OPEN TO ALL.

Where, on complaint charging respondent, engaged in manufacturing, processing, offering, selling, and distributing cheese, cheese products, and cheese foodstuffs, with unlawful discrimination in violation of section in question, in allowing from one cent to three cents discount, as case might be, on certain quantity purchases of loaf cheese, and fifteen percent discount on weekly purchases of package cheese and cheese products (excepting such loaf cheese and cream loaf cheese subject to discounts as above indicated), exceeding \$100 in volume, it appeared that said company's pricing policies were very similar to, and its discounts on most items were identical with, those shown to have been used by Kraft-Phenix Cheese Corporation, Docket 2935, July 17, 1937, 25 F. T. C. 537, in which order of dismissal issued, all sales of package cheese during period covered by Commission's supplemental investigation were made at list prices less fifteen percent discount, and allegation that the differing discounts appearing in respondent's price schedule were made to meet those of competitors or services and facilities furnished by competitors, was not controverted by information in hands of Commission, closing of proceeding without prejudice indicated and so ordered.

Mr. Allen C. Phelps and Mr. James I. Rooney for the Commission. Thompson, Rabb & Stevenson, of Indianapolis, Ind., and Williams, Myers & Quiggle, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions 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" as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13) and for other purposes," the Federal Trade Commission, having reason to believe that Shefford Cheese Company, a

Complaint

25 F. T. C.

corporation, is violating and has been violating the provisions of Section 2 (a) of said Act, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Shefford Cheese Company, Inc., is a corporation with its principal office, and place of business in the city of Syracuse, N. Y. Said respondent maintains zone or branch offices at Green Bay, Wis., Chicago, Ill., Brooklyn, N. Y., and at various other points in different States of the United States.

PAR. 2. Said respondent corporation is and has been prior to June 19, 1936, engaged in the business of manufacturing, processing, offering for sale, selling, and distributing cheese, cheese products, and cheese foodstuffs. Respondent sells and distributes said products in commerce between and among the various States of the United States, causing said products to be shipped and transported from the respective places of origin or concentration thereof, located in various States of the United States, to purchasers of such products, located usually in different States of the United States from those in which such products originate or are concentrated for distribution, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said products between respondent's factories, processing plants, branch offices, and distributing points and purchasers located in States of the United States different from those in which such factories, processing plants, branch offices, and distributing points are located; that said commodities are so sold and distributed for use, consumption, and resale within the different States of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned, has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, processing, offering for sale, selling, and distributing cheese, cheese products, and cheese foodstuffs in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as above described, respondent since on or about September 19, 1936, has discriminated in price and is now discriminating in price between different purchasers buying said products of like grade and quality, so sold in interstate commerce for resale to consumers, by giving and allowing to some of its said purchasers of cheese and cheese products lower prices than those given or allowed other of its said purchasers competitively engaged one with the other in the resale of said products to the consumer within the United States. Said discriminations consist in the following:

1. In connection with the offering for sale and sale of Shefford five-pound loaf cheese, in the granting of an allowance of a one cent discount from the unit pound price set for lots of 5 pounds to 29 pounds of such product for purchases in lots of 30 pounds to 149 pounds; in the allowance of a one cent per pound discount from the price set for lots of 30 pounds to 149 pounds for purchases of lots from 150 pounds to 749 pounds; in the allowance of a one-half cent per pound discount from the price set for lots of 150 pounds to 749 pounds for purchases of 750 pounds or over.

2. In connection with the offering for sale and sale of Shefford cream loaf cheese in three pound boxes, in the granting of an allowance of a one cent discount from the unit pound price set for lots of 3 pounds to 15 pounds of such product for purchases in lots of 18 pounds to 297 pounds; in the allowance of a two cent per pound discount from the price set for lots of 18 pounds to 297 pounds for purchases in lots of 300 pounds or over.

3. In connection with the offering for sale and selling of Shefford package cheese and cheese products, except loaf cheese and cream loaf cheese, in the allowance of a fifteen percent discount on all purchases of such products by a customer in a volume in excess of \$100.00 per week.

PAR. 5. That the purchasers of such commodities from respondent, so bought and sold in interstate commerce, are in competition in the resale of such products to the consumer with other such purchasers in the different States of the United States in which said purchasers are respectively located and engaged in business; that the effect of such discriminatory prices is to enable some of said purchasers to purchase such commodities at a lower price than competing purchasers can buy the same products, solely because of the variation of volume of resale trade done in such products by the different purchasers thereof.

PAR. 6. The general effect of said systematic discrimination in price, made by said respondents as above set forth has been or may be to substantially lessen competition or to injure, destroy or prevent competition in the sale and distribution of cheese and cheese products between the said respondent and other manufacturers and distributors of similar products engaged in interstate commerce, and also between the said favored purchasers of said products receiving such discriminatory prices and other unfavored competing purchasers of said products not receiving said discriminatory prices; and the effect of said discriminations has been or may be to tend to create a monopoly in respondent in said line of commerce and also in the said favored

purchasers receiving said discriminatory prices from said respondent, in the resale of said products in different localities or trade territories in the United States in which such purchasers respectively operate.

PAR. 7. The foregoing alleged acts of the said respondent are in violation of Section 2 (a) of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C. Title 15, Section 13), and for other purposes."

MEMORANDUM OPINION

The complaint in this case charges respondent Shefford Cheese Company, Inc., with price discrimination in connection with the sale of loaf cheese and packaged cheese in violation of Section 2 (a) of the Clayton Act as amended (the Robinson-Patman Act). Respondent, after having answered, subsequently filed a motion to dismiss the complaint on certain grounds set out therein. This matter comes before the Commission upon respondent's said motion to dismiss.

After the issuance of the complaint, the Commission caused a supplemental investigation of the facts in this case to be made, and in addition has available to it certain information voluntarily submitted by the respondent.

It appears that this respondent's pricing policies are very similar to, and on most items its discounts are identical with, those shown by the evidence in Docket 2935 to have been used by the respondent in the case, Kraft-Phenix Cheese Corporation. It further appears that during the period covered by the Commission's supplemental investigation all sales of packaged cheese by respondent Shefford Cheese Company were made at list prices less a discount of 15%; hence there was in fact no discrimination between two classes of customers in connection with the sale of this class of products. In addition, it is to be noted that this respondent alleges in its answer that the differing discounts appearing in its price schedule were made to meet those of competitors or the services and facilities furnished by competitors, and the information in the hands of the Commission does not controvert this allegation.

The Commission therefore considers, on the basis of the facts before it, that this proceeding should be closed without prejudice, and it has been so ordered.

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Order

ORDER CLOSING CASE

This matter coming on to be heard by the Commission upon the motion of respondent to dismiss the complaint, and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises;

It is ordered, That respondent's motion to dismiss the complaint be denied, but that the case growing out of the complaint herein, be and the same hereby is, closed, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure..

IN THE MATTER OF
E. O. JACKSON DISTILLING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 2940. Complaint, Oct. 6, 1936—Decision, Oct. 30, 1937

Where a corporation engaged in distilled spirits rectifying industry, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in producing gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in sale of its aforesaid various products, and of whisky theretofore, and for a time, distilled by it as lessee of a Kentucky distillery prior to discontinuance of such distilling operations, to wholesale purchasers, principally, in most of the other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in the sale thereof in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth, and also those who, engaged in either distilled spirits or distilled spirits rectifying industry, or both, do not make grossly exaggerated and misleading statements regarding the quality of a whisky artificially aged in from 30 to 60 days so as to give it appearance of whisky which had been aged in the wood for approximately two years—

- (a) Represented, through use of word "distilling" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that all its said whiskies and other alcoholic beverages bottled by it were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it was not, as to all its products excepting liquor actually produced by it under lease as aforesaid, a distiller, for the spirituous bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public, but a rectifier, within true intent and meaning of the law and as commonly understood by trade and consuming public, and with tendency to induce public to purchase products of concern using such words in its corporate name, in preference to those of other bottlers, as and for products bottled by actual distiller and as giving purchaser, in buying as directly as