

Complaint

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IN THE MATTER OF
METZ BROS. BAKING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED
BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3740. Complaint, Mar. 20, 1939—Decision, Dec. 28, 1939

Where a corporation engaged in manufacture, offer, sale, and distribution of bread between and among the States of Iowa, Minnesota, South Dakota, and Nebraska, for resale in said various States and, as thus engaged, in substantial competition with others similarly engaged in manufacture, sale, and distribution of said product in commerce—

Discriminated in price between different purchasers buying said bread of like grade and quality sold by it in interstate commerce for use, consumption, and resale, through giving and allowing to some of its purchasers lower prices than given or allowed to others of its purchasers, in lowering prevailing wholesale price of bread sold by it and its competitors in various trade areas in aforesaid section from 11 cents to 8 cents for 24-ounce loaf, and from 8 cents to 6 cents for 16-ounce loaf, while retaining, in certain Iowa trade area, price of 10 cents for 24-ounce loaf, 8 cents for 20-ounce loaf, and 6 cents for 16-ounce loaf;

With result that effect of said discrimination in price thus made by it was to substantially lessen competition and to injure, destroy, or prevent competition between it and its competitors in sale and distribution of such product, and to tend to create monopoly in it in line of commerce concerned in the various localities or trade areas in the United States in which said competitors respectively were engaged:

Held, That such acts and practices, under the facts and circumstances set forth, were in violation of section 2 (a) of act of Congress approved October 15, 1914, as amended.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. John T. Haslett for the Commission.

Sifford & Wadden, of Sioux City, Iowa, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Metz Bros. Baking Co., is a corporation organized and existing under and by virtue of the laws of the

State of Iowa, with its principal office and place of business located at 408 Pearl Street, Sioux City, Iowa, and plants located at Sioux City, Iowa, and Sioux Falls, S. Dak.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling, and distributing bread. Respondent sells and distributes said product in commerce between and among the States of Iowa, Minnesota, South Dakota, and Nebraska, and preliminary to or as a result of said sales causes said product to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in the aforementioned States other than the State of origin of the shipment. There is, and has been at all times herein mentioned, a continuous current of trade and commerce in said product across State lines between respondent's factories and the purchasers of said product. Said product is sold and distributed for resale within the States of Minnesota, South Dakota, Nebraska, and Iowa.

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 and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bread in commerce.

PAR. 4. In the course and conduct of its business, as aforesaid, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said bread of like grade and quality sold by the respondent in interstate commerce for use, consumption, and resale by giving and allowing certain of its said purchasers of its product lower prices than given or allowed other of its said purchasers. Said discrimination in price is, by the following practice and policy, pursued by the respondent, to wit: In certain trade areas or localities respondent sells its product of the same grade, quality, and weight at lower prices than it sells the identical product in other trade areas or localities. To illustrate, the respondent, in the course and conduct of its business, maintains two manufacturing plants for bread, one of said plants being located in Sioux City, Iowa, and the other plant being located in Sioux Falls, S. Dak.

From its plant located in Sioux Falls, S. Dak., respondent sells its product to customers located in the trade areas of southeastern, northwestern, and central South Dakota and a part of southwestern Minnesota, and 30 miles into the northwestern territory of Iowa. From its plant located in Sioux City, Iowa, respondent sells its product to customers located in the aforementioned area and also to customers

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located in the trade area comprising the city of Omaha, Nebr., and in and around the trade area of Marshall and Worthington, Minn.

From the respondent's plants, as aforementioned, fleets of trucks are operated for the sale and distribution of bread into and through the various States, as aforesaid. Prior to September 16, 1938, the prevailing wholesale price of bread sold by the respondent and its competitors in the various trade areas, as aforesaid, except in the State of Iowa, was 11 cents for a 24-ounce loaf, and 8 cents for a 16-ounce loaf. On September 16, 1938, respondent lowered the wholesale price of bread within the trade areas designated as southwestern Minnesota and southeastern, northwestern, and central South Dakota, from 11 cents to 8 cents for a 24-ounce loaf, and from 8 cents to 6 cents for a 16-ounce loaf, or a decrease in the wholesale price of 27 percent; while in the trade area of the northwestern section of the State of Iowa the respondent maintained a price of 6 cents for a 16-ounce loaf, 8 cents for a 20-ounce loaf, and 10 cents for a 24-ounce loaf.

PAR. 5. The general effect of said discrimination in price so made by the respondent, as set forth above, has been and may be (a) substantially to lessen competition, and (b) to injure, destroy, or prevent competition between respondent and its competitor in the sale and distribution of such product, and (c) to tend to create a monopoly in respondent in said line of commerce in the various localities or trade areas in the United States in which such competitors respectively are engaged in business.

PAR. 6. The foregoing alleged acts and practices of said respondent are violations of subsection 2 (a) of section 1 of the 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, sec. 13), and for other purposes.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by section 1 of an act 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, sec. 13) and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on March 20, 1939, issued and served its complaint in this proceeding upon the respondent Metz Bros. Baking Co., a corporation, charging it with discriminating in

price between different purchasers of bread in violation of subsection (a) of section 2 of the said act, as amended.

After the issuance and service of said complaint an answer was filed by the respondent Metz Bros. Baking Co. Pursuant to written notice to the respondent herein of the date, place, and time hearing would be held, the respondent by counsel appeared and made motion before a trial examiner for the Commission to withdraw the answer filed and to file with the Commission in lieu thereof an answer admitting all the material allegations as set forth in the complaint to be true, and waiving all intervening procedure and further hearings, all of which appears in the record herein. Subsequently, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving all intervening procedure, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearings before the Commission on said complaint and substitute answer, briefs, and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Metz Bros. Baking Co., is a corporation organized and existing under and by virtue of the laws of the State of Iowa with its principal office and place of business located at 408 Pearl Street, Sioux City, Iowa, and having plants located at Sioux City, Iowa, and Sioux Falls, S. Dak.

PAR. 2. The respondent is engaged in the business of manufacturing, offering for sale, selling, and distributing bread. The respondent sells and distributes such product in commerce between and among the States of Iowa, Minnesota, South Dakota, and Nebraska, and causes such product to be shipped and transported from the place of origin of the shipment to purchasers who are located in the aforementioned States other than the State of origin of the shipment. There has been at all times a continuous current of trade and commerce in said product across State lines between respondent's manufacturing plants and the purchasers of said product. The product manufactured by the respondent is sold and distributed for resale within the States of Minnesota, South Dakota, Nebraska, and Iowa.

PAR. 3. In the course and conduct of its business as aforesaid, the respondent has been and is in substantial competition with other

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corporations and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bread in commerce.

PAR. 4. Since June 19, 1936, in the course and conduct of the business engaged in by the respondent, the respondent has been discriminating in price between different purchasers buying said bread of like grade and quality sold by the respondent in interstate commerce for use, consumption, and resale by giving and allowing some of its purchasers of its product lower prices than given or allowed other of its said purchasers. The respondent pursued the following practice and policy in discriminating in price, to wit: In certain trade areas or localities respondent sold its product of the same grade, quality, and weight at a lower price than it sold the identical product in other trade areas or localities. From the respondent's plant located in Sioux Falls, S. Dak., respondent sold its product to customers located in the trade areas of southeastern, northwestern, and central South Dakota, and a part of southwestern Minnesota, and 30 miles into the northwestern territory of Iowa. From its plant in Sioux City, Iowa, respondent sold its product to customers located in the aforementioned area and also to customers located in the trade area comprising the city of Omaha, Nebr., and in and around the trade area of Marshall and Worthington, Minn. From these plants as aforementioned, fleets of trucks operate for the sale and distribution of bread into and through the various States as aforesaid. Prior to September 16, 1938, the prevailing wholesale price of bread sold by the respondent and the respondent's competitors in the various trade areas as aforesaid, except in the State of Iowa, was 11 cents for a 24-ounce loaf, and 8 cents for a 16-ounce loaf. On September 16, 1938, respondent lowered the wholesale price of bread within the trade areas designated as southwestern Minnesota and southeastern, northwestern, and central South Dakota from 11 cents to 8 cents for a 24-ounce loaf and from 8 cents to 6 cents for a 16-ounce loaf, while at the same time, in the trade area of the northwestern section of the State of Iowa, the respondent maintained a price of 6 cents for a 16-ounce loaf, 8 cents for a 20-ounce loaf, and 10 cents for a 24-ounce loaf.

PAR. 5. The effect of said discrimination in price so made by the respondent as heretofore set forth has been to substantially lessen competition and to injure, destroy, or prevent competition between respondent and its competitors in the sale and distribution of such product and to tend to create a monopoly in respondent in said line of commerce in the various localities or trade areas in the United States in which such competitors respectively are engaged.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of facts, the Commission concludes that the aforesaid acts and practices of respondent, Metz Bros. Baking Co., are in violation of section 2 (a) of said act of Congress entitled "An act to amend section 2 of an 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, sec. 13) and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer filed herein on December 2, 1939, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of section 2 (a) of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended.

It is ordered, That the respondent, Metz Bros. Baking Co., its officers, representatives, agents, and employees, cease and desist:

1. From selling bread from its plants at Sioux City, Iowa, or Sioux Falls, S. Dak., to purchasers in the trade areas designated as southwestern Minnesota and southeastern, northwestern, and central South Dakota at 8 cents for the 24-ounce loaf, while selling bread of like grade and quality to purchasers in the trade area designated as the northwestern section of the State of Iowa at 10 cents for the 24-ounce loaf; and to purchasers in the trade areas designated as southwest Minnesota and southeastern, northwestern, and central South Dakota at 8 cents for the 24-ounce loaf, while selling such product to purchasers in the trade area designated as the northwest section of the State of Iowa at 8 cents for the 20-ounce loaf.

2. From continuing or resuming the discriminations in price found by the Commission in paragraph 4 of the findings as to the facts.

3. From otherwise discriminating in price in manner and degree substantially similar to the discriminations set forth in paragraph 4 of the Commission's findings as to the facts.

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It is further ordered, That the said respondent, Metz. Bros. Baking Co., within 60 days from the date of the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
McKESSON & ROBBINS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3791. Complaint, May 16, 1939—Decision, Dec. 28, 1939

Where a corporation engaged in manufacture of its "Calox Tooth Powder" or dentifrice, and in sale and distribution thereof to purchasers at various points in other States, in substantial competition with those likewise engaged in such sale and distribution of tooth powders or dentifrices, including among competitors some who do not in any way misrepresent the ingredients in or efficacy of their products in distribution thereof in commerce; in advertising its said product in newspapers and other periodicals of general circulation in the various States and in the District of Columbia, and through broadcasts from radio stations of interstate scope and power—

- (a) Represented, directly and through implication, that use of said powder would assure possession of teeth which were white, clear and sparkling and which were beautiful as those of movie stars, and that such stars employed its said powder to the exclusion of other dentifrices and relied upon it alone in the care of their teeth, through such statements, among others, as "For teeth that 'Shine like the Stars' use Calox Powder," "* * * Take a cue from Hollywood * * *," "* * * gives teeth the whiteness and brilliance the screen demands. It deserves its popularity with the stars * * *," facts being no dentifrice alone is capable of giving all movie stars white, clear and sparkling teeth, use of its said tooth powder alone will not assure possession of such teeth or those as beautiful as teeth of such stars, and such stars do not employ said powder to exclusion of all other dentifrices nor rely thereon or upon any other dentifrice alone in the care of their teeth;
- (b) Represented, as aforesaid, that no tooth surface was neglected and that its said dentifrice would clean the proximal surfaces between the teeth, and that use thereof would result in the liberation of nascent oxygen in the mouth and would prevent film or decay and remove all types of stains, asserted three worst enemies of one's teeth, facts being said powder would not result in such liberation, but the foam resulting from use thereof, which it emphasized, was due largely to the soap content thereof, and it would not clean the proximal surfaces nor prevent film or decay or remove all types of stains, or any stain other than the ordinary surface stains;
- (c) Represented that sodium perborate in said powder would keep gums firm and healthy, and that use of a tooth powder was more effective in cleansing and polishing teeth than was use of a tooth paste, and would neutralize acid mouth conditions and constituted an effective antiacid, facts being said sodium perborate will not accomplish results claimed therefor and might not be a safe cleansing agent for continued use by one unusually sensitive or allergic thereto, dentists differ in their preference for tooth powders or tooth pastes for the brushing, polishing or cleansing of teeth,