

Syllabus

IN THE MATTER OF

ANHEUSER-BUSCH, INC.

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

Docket 2987. Complaint, Nov. 21, 1936—Decision, May 11, 1940

Where a corporation engaged in manufacture, sale and distribution of yeast in commerce to its customers in the several States other than States of origin and shipment, in substantial competition with others engaged in sale and distribution of yeast in commerce between and among the various States;

In selling its bakers' yeast under price lists and schedules pursuant to which purchasers of 50,000 pounds and more of such yeast received price of 14 cents a pound, purchasers of 10,000 to 50,000 pounds received price of 14½ cents a pound, those purchasing from 7,500 to 10,000 pounds received price of 16 cents, and prices in remaining 8 steps ranged upward from 17 cents for monthly purchases or requirements of buyer ranging from 5,000 to 7,500 pounds, to 25 cents for those purchasing from 1 to 150 pounds—

- (a) Discriminated thereby in price between different purchasers of its said product of like grade and quality, through giving and allowing certain purchasers of bakers' yeast, when used in the manufacture of bread and allied products, different prices, as aforesaid, than given or allowed other of its said purchasers competitively engaged one with the other in the sale and distribution of bread and allied products within the United States;
- (b) Discriminated in price between different purchasers by deviating from schedule aforesaid, through practice of applying such schedule on basis of respective customers' monthly requirements, irrespective of whether or not such requirements were purchased of it, (1) between customers, on the one hand, who purchased all of their requirements of yeast from it, and those who purchased only a part of their requirements, so that, under certain circumstances, purchaser buying his entire requirement would pay more than other customer buying similar quantity of it, but with larger monthly requirement, and would pay, also, same amount as still other customer with same requirement, but purchasing less, and (2) between customers, on the one hand, who purchased some, but not all, of their requirements from it, and other customers who also purchased some, but not all, of their requirements, so that, under given circumstances, customer purchasing given quantity, but with larger requirement, might pay less than customer purchasing of its similar quantity, but with smaller requirement;
- (c) Discriminated in price between different purchasers of its said yeast by deviating from said schedule, through selling at prices based on respective purchasers' total consumption or purchases, irrespective of the number or quantity of the individual deliveries, so that independent dealers operating single plant were obligated to pay a great deal more for yeast than large chains operating several bakeries which, with plant in same area as independent, might receive same quantity at particular branch as received by

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independent, by reason of method aforesaid of basing price not upon particular quantity delivered, but upon total delivered to all of large customer's branches; and

- (d) Discriminated in price between different purchasers of its said yeast by deviating from said schedule, through selling to some of certain customers, within definite quantity bracket, its said product at so-called "off-scale" prices, or prices lower than those favored customer should pay for quantity involved according to scale, in event of his purchasing of it his entire requirements;

With result that, through sale of its bakers' yeast as aforesaid set forth, according to said price scale, and through deviating therefrom as above described, large bakeries and chains made large and substantial savings which might be reflected in many different ways in lessening or injuring competition, and were available for periodic reductions in price and increase of sales effort and sales appeal, to the disadvantage of customers against whom discriminations aforesaid were employed, and effect thereof was and might be substantially to lessen competition and tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which it and its favored customers, receiving benefit of such discriminatory prices, were engaged, and to injure, destroy and prevent competition with such customers thus benefited: *Held*, That acts and practices aforesaid of such corporation, under the circumstances set forth, were in violation of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. James I. Rooney for the Commission.

Nagel, Kirby, Orrick & Shepley, of St. Louis, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved June 19, 1936, Public 692 (the Robinson-Patman Act), amending section 2 of an act approved October 15, 1914 (the Clayton Act), the Federal Trade Commission hereby issues its complaint against Anheuser-Busch, Inc., stating the charges in that respect as follows:

PARAGRAPH 1. Respondent Anheuser-Busch, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its office and principal place of business in the city of St. Louis, in the State of Missouri.

Respondent manufactures, sells and distributes yeast in commerce to its customers located in the several States of the United States, causing said yeast, when sold, to be shipped from its respective factories in various States of the United States to the purchasers thereof located in the several States of the United States other than the States of origin of the shipments.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for many years has been, in substantial competition with other corporations, partnerships, firms, and individuals

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engaged in the business of selling and distributing yeast in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business as described in paragraphs 1 and 2 hereof, respondent, since June 19, 1936, has been, and is now, discriminating in price between different purchasers of its said product of like grade and quality by giving and allowing certain purchasers of bakers' yeast, used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged, one with the other, in the sale and distribution of bread and allied products within the United States.

The discrimination in price herein referred to is brought about by the respondent selling said bakers' yeast to its customers upon the following terms:

	<i>Cents per pound</i>
50,000 pounds up per month.....	14
10,000 to 50,000 pounds per month.....	14½
7,500 to 10,000 pounds per month.....	16
5,000 to 7,500 pounds per month.....	17
3,000 to 5,000 pounds per month.....	18
1,500 to 3,000 pounds per month.....	19
1,000 to 1,500 pounds per month.....	20
500 to 1,000 pounds per month.....	21
300 to 500 pounds per month.....	22
150 to 300 pounds per month.....	23
1 to 150 pounds per month.....	25

PAR. 4. The effect of said discrimination in price made by respondent, as set forth in paragraph 3 hereof, has been, or may be, substantially to lessen competition or to injure, destroy, or prevent competition in the manufacture, sale and distribution of bread and allied products; and the effect of said discrimination has been, or may be, to tend to create a monopoly in said favored customers receiving said discriminatory prices from said respondent in the distribution of said products in the United States.

PAR. 5. The foregoing alleged acts of said respondent are a violation of subsection 2 (a) of section 1 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, 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 monop-

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olies 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 November 21, 1936, issued and served its complaint in this proceeding upon the respondent Anheuser-Busch, Inc., a corporation, charging it with discriminating in price between different purchasers of bakers' yeast in violation of subsection (a) of section 2 of said act as amended.

After the issuance and service of said complaint an answer was filed by the respondent Anheuser-Busch, Inc. Respondent made motion for leave to withdraw the answer filed and file with the Commission in lieu thereof an answer admitting all the material allegations of fact as set forth in said complaint to be true and waiving all intervening procedure and further hearing, all of which appears in the record herein. Subsequently the Commission, by order entered herein, granted respondent's motion for leave to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint 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, substitute answer and a stipulation wherein it was agreed that certain testimony and other evidence taken in the proceeding before the Commission styled in the matter of Standard Brands, Incorporated, et al, Docket No. 2986, was thereby made additional testimony and evidence in support of the allegations of the complaint in this proceeding; 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. Respondent Anheuser-Busch, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business in the city of St. Louis, in the State of Missouri.

Respondent manufactures, sells and distributes yeast in commerce to its customers located in the several States of the United States, causing said yeast, when sold, to be shipped from its respective factories in

various States of the United States to the purchasers thereof located in the several States of the United States other than the States of origin of the shipments. There has been at all times a continuous current of trade in commerce in said product across State lines between respondent's manufacturing plants and the purchasers of said product.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for many years has been, in substantial competition with other corporations, partnerships, firms, and individuals engaged in the business of selling and distributing yeast in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business as described in paragraphs 1 and 2 hereof, respondent, since June 19, 1936, has been, and is now, discriminating in price between different purchasers of its said product of like grade and quality by giving and allowing certain purchasers of bakers' yeast, when used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged, one with the other, in the sale and distribution of bread and allied products within the United States.

PAR. 4. For many years prior to and since June 19, 1936, respondent, as a general practice and except as otherwise shown hereafter, has been and is now selling bakers' yeast as aforesaid to its customers at different prices as set forth in the following schedule:

	<i>Cents per pound</i>
50,000 pounds up per month.....	14
10,000 to 50,000 pounds per month.....	14½
7,500 to 10,000 pounds per month.....	16
5,000 to 7,500 pounds per month.....	17
3,000 to 5,000 pounds per month.....	18
1,500 to 3,000 pounds per month.....	19
1,000 to 1,500 pounds per month.....	20
500 to 1,000 pounds per month.....	21
300 to 500 pounds per month.....	22
150 to 300 pounds per month.....	23
1 to 150 pounds per month.....	25

The prices at which respondent sells bakers' yeast according to the foregoing schedule are prices which do not necessarily depend upon the quantities actually purchased from the respondent but upon the monthly requirements of yeast of the respective customers; that is, a customer whose monthly requirements of yeast might be 1,400 pounds and who purchases all of such requirements from respondent, would pay, according to scale, 20 cents per pound; however, if the customer purchased only part of his requirements from the respondent he would

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still pay 20 cents per pound, regardless of what portion of his requirements he so purchased.

PAR. 5. By selling bakers' yeast, as the respondent does, it is discriminating in prices between different purchasers by deviating from this schedule. Such discriminations in price are as follows:

(a) Between customers who purchase all of their requirements of yeast from the respondent and those who purchase some but not all of their requirements of yeast from the respondent.

(b) Between customers who purchase some but not all of their requirements of yeast from respondent and other customers who purchase some but not all of their requirements of yeast from the respondent.

(c) Between customers who purchase any or all of their requirements of yeast from respondent and others who also purchase any or all of their requirements of yeast from the respondent, both of whom are in the same quantity bracket, or in other words, those who purchase "off-scale"; and

(d) By selling at prices based on total consumption irrespective of the number or quantity of the individual deliveries.

As to (a), that is, discrimination in price between customers who purchase all of their requirements of yeast from respondent and those who purchase part of their requirements of yeast from the respondent, for example, a customer whose requirement of yeast is 4,500 pounds a month and who purchase this entire amount from respondent, pays, according to scale, 18 cents per pound, whereas, another customer whose requirements of yeast are 7,500 pounds per month and purchases 4,500 pounds from the respondent pays only 16 cents per pound for the 4,500 pounds purchased from the respondent. Likewise, this same customer would be discriminated against with respect to another customer having the same monthly requirements of 4,500 pounds but who only purchased 500 pounds from the respondent. Such customer, because of monthly requirements of yeast of 4,500 pounds, would pay the respondent only 18 cents per pound for the 500 pounds purchased from it.

As to (b), that is, between customers who purchase some but not all of their requirements of yeast from the respondent and other customers who purchase some but not all of their requirements of yeast from the respondent discriminations are brought about in the following manner: The customer whose requirements are 4,500 pounds per month and who purchases 500 pounds of this from the respondent, pays, according to the scale, for that 500 pounds 18 cents a pound; another customer whose requirements are 1,000 pounds per month and who purchases from the respondent only 500 pounds pays the respond-

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ent 20 cents per pound for the 500 pounds because his requirements are only 1,000 pounds per month.

As to (c), respondent discriminates between certain customers within a definite quantity bracket by selling to some customers at so-called "off-scale" prices, that is, if the customer took all his requirements of yeast from the respondent and should pay, according to said scale, a certain price, respondent sells him that quantity at a lower price.

As to (d), discrimination is brought about by respondent selling its customers on the basis of total consumption or purchases irrespective of the number or quantity of the individual deliveries. By this method of selling yeast, independent dealers operating a single plant are obligated to pay a great deal more for yeast than large chains operating several bakeries and who, with a plant in the same area as the independent, may receive the same quantity of yeast at that particular branch as the independent dealer receives. Different prices for the same quantities of yeast are paid by the respective customers in this instance because the price is not based upon the quantity delivered to the particular branch of the large customer but upon the total quantity delivered to all the branches of the large customer.

PAR. 6. By selling bakers' yeast, as the respondent does, according to the price scale, as set forth in paragraph 4 hereof, and by deviating from said prices in the manner set forth in paragraph 5 hereof, large bakeries and chains make large and substantial savings, which savings may be reflected in many different ways in lessening or injuring competition. Inasmuch as these savings can be used for periodic reductions in price in the sale of bread and allied products, sales effort and sales appeal are increased, all of which operate to the disadvantage of the customers against whom these discriminations are employed. The effect of said discriminations in price so made by the respondent as heretofore set forth is and may be substantially to lessen competition and tend to create monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which respondent and its customers, receiving the benefit of such discriminatory prices, are engaged and to injure, destroy, or prevent competition with customers receiving the benefit of such discrimination.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the aforesaid acts and practices of respondent Anheuser-Busch, Inc., are in violation of sec-

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tion 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 April 30, 1940, 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 stipulation whereby certain testimony and other evidence taken in the proceeding before the Commission styled *In the Matter of Standard Brands, Inc., et al.*, Docket No. 2986, was made additional testimony and evidence in support of the allegations of the complaint in this proceeding, and the Commission being of the opinion that said respondent has violated the provisions of section 2 (a) 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" (the Clayton Act) as amended, and having made its report, stating its findings as to the facts and its conclusions.

It is ordered, That the respondent, Anheuser-Busch, Inc., its officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of bakers' yeast in interstate commerce, or in the District of Columbia, do forthwith cease and desist from discriminating in price between different purchasers of bakers' yeast of like grade and quality, either directly or indirectly:

1. By selling said bakers' yeast at different prices based upon the total quantity or volume purchased or required monthly by the respective purchasers, as set forth in paragraph 4 of said findings of fact.

2. By selling said bakers' yeast at different prices based upon the total quantity or volume purchased (whether from the respondent or from any other source) over a period of time by the respective purchasers, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondent or any of its customers are engaged, or to injure, destroy or prevent competition with respondent or any of its customers, except where said differentials in price, based upon the quantities or volume purchased from the respondent during such period of time by said respective purchasers, make only due allow-

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ance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials are allowed.

3. By means of price differences resulting from selling said bakers' yeast to a single purchaser at prices based upon the total quantity or volume purchased (whether from the respondent or from any other source) during a period of time by such purchaser, irrespective of the quantities or volume delivered by the respondent to the separate plants, factories, bakeries, or warehouses of such purchaser, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondent or any of its customers is engaged, or to injure, destroy or prevent competition with respondent or any of its customers, except where said differentials in price make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered.

4. By selling said bakers' yeast to certain of such purchasers at so-called "off-scale" prices as described in paragraph 5 of said findings of fact, even though the differentials in price of any given price scale make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials in price are allowed.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

RAY RENNISON AND MARTHA A. RENNISON, DOING
BUSINESS AS RAYSON SERVICE BUREAUCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3452. Complaint, June 8, 1938—Decision, May 11, 1940*

Where two individuals engaged in sale and distribution of courses of study and instruction to prepare students for examinations for United States Civil Service positions, and of a correspondence course also of study and instruction in forestry, to purchases in various other States, in substantial competition with others engaged in sale and distribution in commerce among the various States and in the District of Columbia of correspondence courses of study and instruction having the same object and of other such courses of other kinds, including many who, in connection with the sale of their respective courses, do not in any manner misrepresent the same or matters pertaining thereto—

- (a) Made use of word "Bureau" in the trade name under which they conducted their said business and featured same in their advertising matter in periodicals of general circulation and on their stationery and advertising matter distributed to prospective students, and in numerous pieces of advertising matter disseminated by them described the building in which they carried on such business as "United States National Building"; and
- (b) Described and referred to one of said individuals, who more recently continued to carry on such business, in advertising matter above referred to, as "Director" of said school, and set forth in their advertising that he had been employed in the service of the United States Government and had had forestry experience and a vast knowledge of wildlife, through such representations, among others, as " * * * the director of the Bureau * * * has personally worked in the mail service * * *," " * * * The director has personally worked in Government service * * *" and "The director * * * has forestry experience and a vast knowledge of wildlife."

Facts being individual in question was not a graduate of any school of forestry or any college, and was not an expert in such subject and had not had long practical experience therein or in wildlife, and his employment by the Government had been limited to a temporary appointment for 3 or 4 weeks in a Post Office substation located in a department store in a western city, and was not such as to give him any appreciable experience in Government work or qualify him as an expert in civil service matters or make him familiar therewith, and school in question was not an agency of and had no connection with the United States Government or Civil Service Commission and did not give instruction by authority thereof, as suggested by use of word "Bureau" as aforesaid, used by many Government agencies, and by erroneous description of the United States Bank Building in which they carried on business as aforesaid as "United States National Building," they had no jobs at their disposal and could in no way influence or control appointments to United States classified civil service, nor be of assistance to prospective appointees, except by instructing them so that they might be better pre-