

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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3798. Complaint, June 1, 1939—Decision, Sept. 25, 1940

Where a corporation engaged in manufacture of glucose or corn syrup unmixed, and in distribution and sale thereof to, mostly, manufacturers of candy who were competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers in the various States and in the District of Columbia, of said product, in most kinds of which such syrup is used as an ingredient to some extent, and in production of many varieties of which it is one of major raw materials, with cost thereof to candy manufacturer purchasers constituting (1) a substantial part of cost of raw materials used in particular candies, having relatively high syrup content and of total cost of manufacturing extensive line of candies having wide range of syrup contents, and (2) a significant and possibly determinative factor in competitive sale to customers and especially chain store and other large quantity purchasers of many candies containing substantial quantity of syrup ingredient, priced at few cents a pound, and bearing no differentiating name or brand, and in sale of which candy sellers attract customers by selling at small fraction per pound lower than competitor—

- (a) Sold its said syrup at certain delivered prices and during certain period to purchasers in cities of Chicago and Danville, Ill., while contemporaneously selling such syrup of like grade and quality to purchasers in various other cities, and in accordance with particular city in which particular customer was located, at higher prices;
- (b) Sold its said syrup thereafter to purchasers in City of Chicago at certain delivered prices, while contemporaneously selling such syrup of like grade and quality to purchasers in Danville and in various other cities and in accordance with particular city in which located, at higher prices; and
- (c) Sold its said syrup for delivery in containers different in type and smaller in size than tank cars, at higher prices to some purchasers than prices at which it sold such syrup for delivery in same type and size of container to other purchasers;

With result that

(1) It discriminated through said varying prices, differences between which, not justified by it, made more than due allowance for differences in cost of delivery, in price between said purchasers who had paid the various different prices for its said product, and unfavored purchaser manufacturers of candies, containing substantial quantity of such syrup, priced at few cents per pound only, and sold competitively on basis of a small fraction of a cent per pound, and particularly to chain stores and other purchasers of large quantities, as above set forth, were compelled to decrease their profit to extent necessary to absorb higher cost imposed as aforesaid, and, in event of such impairment to any material degree, to make only selective sales at non-

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competitive prices to customers on basis of service, or some other nonprice basis, and had their volume of sales directly reduced and overhead unit costs increased through resulting unused capacity, with further impairment of profits;

(2) There was consequent tendency to discourage and weaken financially unfavored candy manufacturers, and possibility of bringing about their elimination and effective deterrent to establishment of new candy manufacturing enterprises in those areas in which it discriminated, as above set forth, was constituted; and

(3) It conferred upon favored purchasers substantial monetary benefit, giving them substantial competitive advantage, and enabling them to reduce prices of their candy, lower costs, and increase volume and profits; and

With result that effect of discriminations in question and results thereof, as above set forth, had been and might be substantially to lessen competition between favored and unfavored purchasers and tend to create monopoly in former and injure, destroy, and prevent competition therewith:

Held, That in discriminating in price between different purchasers of glucose, under circumstances set forth, it violated provisions of Sec. 2 (a) of Clayton Act, as amended by Robinson-Patman Act.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. P. R. Layton and *Mr. Frank Hier* for the Commission.

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

COMPLAINT

The Federal Trade Commission, having reason to believe that the 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. Respondent, Anheuser-Busch, Inc., is a corporation organized and existing under the laws of Missouri with its principal office and place of business at Ninth and Pestalozzi Streets in the city of St. Louis and State of Missouri.

PAR. 2. Respondent owns and operates a plant at St. Louis, Mo. This plant has a corn grinding capacity in excess of 10,000 bushels per day, with complete facilities for the finished fabrication of corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) starch, both for food and other purposes; (2) glucose or corn syrup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by

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treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various States of the United States from the State in which its factory is located across State lines to purchasers thereof located in States other than the State in which respondent's said plant is located in competition with other persons, firms, and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competi-

tion in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of the provisions of subsection (a) 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).

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 the Robinson-Patman Act, approved June 19, 1936, (U. S. C. title 15, sec. 13), the Federal Trade Commission on June 1, 1939, 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 respondent's various products in violation of subsection (a) of section 2 of said act as amended.

After the issuance and service of said complaint, a motion to dismiss the complaint or make it more definite and certain was filed by respondent, which said motion was denied by order of the Commission on June 30, 1939. Thereafter, on July 21, 1939, and pursuant to an extension of time granted by the Commission, an answer was filed by respondent. Pursuant to written notice to respondent of the time, date, and place, hearings were commenced on May 22, 1940, before John P. Bramhall, an examiner designated by the Commission, at which hearings evidence in support of the charge made in the complaint was introduced by P. R. Layton and Frank Hier, attorneys for the Commission, and other evidence was introduced into the record by stipulation between counsel for the Commission and counsel for respondent. Respondent presented no testimony in opposition to the charge contained in the complaint and waived all intervening procedure, oral arguments, the filing of briefs and further hearings, all of which appears of record herein.

Thereafter this proceeding came on for final disposition by the Commission on said complaint and answer and the record herein 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 conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Anheuser-Busch, Inc., is a corporation organized and existing under the laws of Missouri with its principal office and place of business at Ninth and Pestalozzi Streets, St. Louis, Mo.

PAR. 2. For many years respondent has been and is now engaged in the business of manufacturing, distributing, and selling glucose or corn syrup unmixed. Such syrup is one of the principal products derived in the refining of corn.

PAR. 3. For the purpose of refining corn and the manufacture of such syrup, respondent owns and operates a corn refining plant at St. Louis, Mo. This plant has a corn grinding capacity in excess of 10,000 bushels per day with facilities for the finished fabrication of corn products, including such syrup.

PAR. 4. For many years in the course and conduct of its business respondent has sold and shipped and does now sell and ship such syrup in commerce between and among the several States of the United States, causing such syrup to be sold and shipped from its said plant in St. Louis, Mo., across State lines to purchasers thereof located in other States of the United States in competition with other corporations engaged in similar lines of commerce.

PAR. 5. Most of such purchasers so located purchase such syrup which is of like grade and quality for use in the manufacture of candy. Such purchasers are competitively engaged in the sale of such candy to various customers including chain stores, wholesalers and retailers, all located in the several States of the United States and in the District of Columbia.

Such syrup has been sold and delivered by respondent in several types and sizes of containers, at prices per cwt. which increase over the tank car price per cwt. according to the size and type of container as follows:

Container	Price per hundred-weight over tank car	
	<i>Price per cwt.</i>	
Barrels.....	.33¢	
Half barrels.....	.58¢	
10-gallon kegs.....	.98¢	
5-gallon kegs.....	1.08¢	
Returnable drums	.13¢	Where there is no return freight on empty drums.
"	.18¢	Where return freight on empty drum is between 50 and 75 cents per hundred weight.
"	.23¢	Where return freight on empty drum is between 76 and 90 cents per hundred weight.
"	.28¢	Where return freight on empty drum is between 91 cents and \$1.00.
"	.33¢	Where return freight on empty drum is more than \$1.00.

PAR. 6. Between June 19, 1936, and August 1, 1937, respondent has sold such syrup at higher delivered prices per one hundred pounds to purchasers located in certain cities other than Chicago, Ill., and Danville, Ill., than it has sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and Danville, Ill.; and between September 14, 1937, and the present time, respondent has sold such syrup to purchasers located in Danville, Ill., and to other purchasers located elsewhere outside of Chicago, Ill., at higher prices per one hundred pounds than it has sold such syrup in containers of like size and type to purchasers located in Chicago, Ill.

The higher prices at which such syrup was sold by respondent to such purchasers located in cities other than Chicago, Ill., were not uniformly higher than the prices at which such syrup was concurrently sold by respondent to purchasers located in Chicago, Ill., but such higher prices varied with the geographical location of the cities in which such purchasers were located.

Thus, on the following dates respondent sold such syrup to such purchasers located respectively in each of the following cities at the delivered prices per hundred pounds which are shown opposite said cities for such syrup (43° Baumé), in tank cars, or in other containers, in which latter case, for the purposes of comparison, no differential has been added for the containers:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	2.44	3.04	2.29	2.09
Danville, Ill.	2.44	3.04	2.435	2.20
St. Louis, Mo.	2.60	3.20	2.47	2.27
Centralia, Ill.	2.60	3.20	2.47	2.27
Davenport, Iowa.	2.60	3.20	2.47	2.27
Kansas City, Mo.	2.80	3.40	2.69	2.49
St. Joseph, Mo.	2.80	3.40	2.69	2.49
Memphis, Tenn.	2.80	3.40	2.69	2.49
Sioux City, Iowa.	2.80	3.40	2.69	2.49
Aberdeen, Miss.	2.81	3.41	2.69	2.49
Chattanooga, Tenn.	2.82	3.42	2.71	2.51
Nashville, Tenn.	2.82	3.42	2.71	2.51
Jackson, Miss.	2.82	3.42	2.71	2.51
New Orleans, La.	2.855	3.455	2.75	2.55
Iola, Kans.	2.96	3.56	2.86	2.66
Little Rock, Ark.	2.99	3.59	2.89	2.69
Denver, Colo.	3.24	3.64	2.95	2.75
Jacksonville, Tex.	3.14	3.74	3.06	2.86
Ft. Worth, Tex.	3.17	3.77	3.09	2.89
Dallas, Tex.	3.17	3.77	3.09	2.89
Abilene, Tex.	3.20	3.80	3.12	2.92

The differentials shown above as existing between the foregoing prices on August 1, 1936, and on August 1, 1937, were substantially the same during the entire period from June 19, 1936, until after August 1, 1937; and the differentials shown above as existing between the foregoing prices on August 1, 1938, and on August 1, 1939, were

substantially the same during the entire period from September 14, 1937, until the present time.

PAR. 7. Since June 19, 1936, respondent has also sold such syrup for delivery in containers different in type and smaller in size than tank cars at higher prices to some purchasers than it has sold such syrup for delivery in the same type and size of containers to other purchasers.

Thus, in St. Louis, Mo., respondent sold such syrup delivered in returnable drums to some purchasers at a price of 13 cents per hundredweight over the tank car price in accordance with its pricing policy as set forth in paragraph 5 hereof but respondent concurrently sold such syrup in identical containers to other purchasers in St. Louis at a price of only 4 cents per hundredweight over the tank car price.

PAR. 8. By selling such syrup at said different prices as found in paragraphs 6 and 7, the differences between which prices have not been justified by respondent and which differences make more than due allowance for differences in the cost of delivery, it has discriminated in price between such purchasers who have paid the various different prices for such syrup.

PAR. 9. The result of said discriminations has been to place the unfavored purchasers paying the greater prices for such syrup under a competitive disadvantage.

Such syrup is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy.

Not only is the quantity of such syrup used significant, but the price paid therefor by such purchasers is a substantial part of the cost of the raw materials used in particular candies having a relatively high syrup content as well as of the total cost of manufacturing an extensive line of candies having a wide range of syrup contents. Said costs of the unfavored of such purchases increase over said costs of such favored purchasers directly as the amount of the discrimination between them increases.

Many candies containing a substantial quantity of such syrup are priced at but a few cents per pound. As to products so priced and bearing no differentiating name or brand, sellers have attracted customers by selling at only a small fraction of a cent per pound lower than a competitor. This has been especially true in selling such candies to chain stores and other purchasers of large quantities to whom such a small difference in price is determinative in placing their business.

Under such circumstances an unfavored purchaser's higher raw material costs are difficult if not impossible to recover by increasing

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the price of the candy manufactured if such unfavored purchaser hopes to maintain volume sales. The effect on such unfavored purchaser of the higher cost of such syrup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher syrup cost as long as such unfavored purchaser attempts to sell his candy at a competitive price.

Where such absorption causes an impairment of profit to any material degree, it results in such unfavored purchaser making only selective sales at non-competitive prices to customers on the basis of service or some other nonprice basis and directly causes reduced volume of sales resulting in unused capacity and increased overhead unit costs on particular as well as on all products; the consequence again being impairment of profits.

Such impairment of profits tends to discourage and to weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry and does prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which respondent discriminates as found above.

A further result of said discriminations has been to confer upon the favored purchasers receiving the benefit of said discriminations a substantial monetary benefit which has given such benefited purchasers a substantial competitive advantage, enabling them to reduce the selling prices of their candy, lower costs, increase volume and increase profits.

The effect of the discriminations found in paragraphs 6, 7, and 8, and the results therefrom as set out hereinabove, has been and may be substantially to lessen competition between the favored and unfavored purchasers, tend to create a monopoly in such favored purchasers and injure, destroy, and prevent competition with such favored purchasers.

CONCLUSION

The Commission concludes that in discriminating in price between different purchasers of glucose as set forth in the above findings of fact, the respondent, Anheuser-Busch, Inc., has violated the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony taken and stipulated, and other evidence introduced

before John P. Bramhall, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no evidence having been presented in opposition thereto by respondent, and further hearings, oral argument, and the filing of briefs having been waived by the respondent; the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that respondent has violated the provisions of an Act of Congress entitled, "An act to supplement existing laws against unlawful restraints and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, sec. 13, U. S. C. A.).

It is ordered, That respondent, Anheuser-Busch, Inc., its officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of glucose or corn syrup unmixed in interstate commerce and in the District of Columbia do forthwith cease and desist:

1. From discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade and quality either directly or indirectly in the manner and degree as found by the Commission in paragraphs 6 and 7 of the Commission's findings as to the facts and conclusion.

2. From continuing or resuming the discriminations in prices found by the Commission in paragraphs 6 and 7 of the aforesaid findings as to the facts and conclusion.

3. From otherwise discriminating in price in the manner and degree substantially similar to the discriminations found in paragraphs 6 and 7 of the Commission's findings as to the facts and conclusion.

4. From otherwise selling said glucose or corn syrup unmixed to some purchasers thereof at a different price than to other purchasers, the effect whereof may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which customers of the respondent are engaged, or to injure, destroy or prevent competition with any person who either grants or receives the benefit of such discrimination, provided that nothing shall prevent price differences which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered; and provided further that nothing shall prevent respondent from showing that its lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

It is further ordered, That the said respondent, Anheuser-Busch, Inc., 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.

Syllabus

IN THE MATTER OF

CURTIS C. WALKER, TRADING AS DIAMOND CANDY
COMPANY

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

Docket 4224. Complaint, Aug. 7, 1940—Decision, Sept. 26, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and included (1) number of bars of candy, together with push card for use in sale and distribution of such products to purchasing public under plan in accordance with which customer received bar without cost or paid therefor 1, 2, or 3 cents depending upon number secured by chance in accordance with particular disc of card pushed, and (2) various other assortments involving lottery or chance feature and similar in methods of sale and distribution to that above described from which they varied in detail only—

Sold such assortments, along with said push cards to dealer or retailer purchasers, by whom, as such direct or indirect purchasers, assortments in question were displayed and sold to purchasing public in accordance with afore-said sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of his candy in accordance with such plans or methods as above set forth, involving game of chance or sale of a chance to procure a bar of candy without cost, or at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate consumers of said candy were attracted to said plans employed by him in the sale and distribution of his said products, and element of chance involved therein and were thereby induced to buy his said candy in preference to that offered and sold by said competitors who do not use such or equivalent sales plans or methods, and with result, through use of such plans or methods and because of said game of chance, of unfairly diverting trade to him from said competitors who do not use same or equivalent sales plans or methods; to the substantial injury of competition:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.