

IN THE MATTER OF
UNION STARCH & REFINING COMPANY, AND UNION
SALES CORPORATION

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 3804. Complaint, June 1, 1939—Decision, Dec. 11, 1940

Where a corporation and its wholly owned sales subsidiary, respectively engaged in manufacture, and in sale and distribution, of glucose or corn sirup unmixed, to, mostly, manufacturers in other States 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 (1) most kinds of which such sirup 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 a substantial part of cost of raw material used in particular candies having relatively high sirup content and of total cost of manufacturing extensive line of candies having wide range of sirup contents, and with costs of such purchasers, thus unfavored, increasing over such costs of favored purchasers directly as amount of discrimination between them increased and as sirup content of candy increased, and in (2) many of which candies containing substantial quantity of such sirup and priced at but few cents per pound, and bearing no differentiating name or brand, sellers attracted customers by selling at only a small fraction of a cent per pound lower than a competitor, and especially so in case of sale of such candies to chain stores and other purchasers of large quantities, to whom such small difference in price was determinative in placing their business, so that, under circumstances aforesaid, unfavored purchaser's higher raw material costs were difficult, if not impossible, to recover by increasing price of candy manufactured if such unfavored purchaser hoped to maintain volume sales—

- (a) Sold and delivered their said sirup in several types and sizes of containers at prices per hundredweight, which increased over tank car price per hundredweight according to size and type of container, with differentials ranging from 33 cents for barrels to \$1.08 for five gallon kegs, and from 13 cents to 33 cents for returnable drums, depending on presence or absence of return freight thereon and amount thereof; and
- (b) Sold their said sirup, between June 19, 1936, and July 23, 1937, at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago, Danville, North Chicago, Dixon, and Zion, Ill., and Milwaukee, Wis., than those at which they sold their said sirup in containers of like size and type to purchasers located in cities aforesaid, and thereafter sold their said sirup to purchasers in all cities other than Chicago at higher prices per hundredweight than those at which they sold said product in containers of like size and type to purchasers located in city aforesaid, and at prices which were not uniformly higher, but varied with geographical

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location of cities in which purchasers paying same were located, and which involved, for earlier period, and for later period extending to present time, substantially same differentials for respective periods;

With the result that—

(1) Through sale of their said sirup at aforesaid prices, differences between which were not justified by them, they discriminated in price between purchasers paying such differing prices for their product aforesaid;

(2) Effect of such higher sirup cost on those unfavored purchasers above described, selling candies containing substantial quantity of such sirup and priced at but few cents per pound with no differentiating name, etc., and under circumstances hereinabove indicated, involving sales to chain stores, etc., was to decrease profit to extent necessary to absorb higher direct per unit cost imposed by higher sirup cost, as long as particular unfavored purchaser attempted to sell his candy at a competitive price, and, where such absorption caused impairment of profit in any material degree, to bring about selective sales only by such unfavored purchaser at noncompetitive prices to customers on basis of service or some other nonprice basis, and with profit's further impairment through reduced sales volume, unused capacity and increased overhead unit costs for all products thereby brought about;

(3) Such impairment of profits tended to weaken financially existing unfavored candy manufacturers, and might bring about their elimination from the industry and prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which they discriminated as above set forth; and

(4) There was conferred a competitive advantage upon favored purchasers receiving and enjoying such discriminations and whose benefits in lower costs and prices and greater profits, as compared with unfavored purchasers, could well lead to domination by said favored purchasers of the candy industry; and

With the result that the effect of such discriminations, as above set forth, had been or might 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:

Held, That, in discriminating in price between different purchasers of glucose as above set forth, said corporation and its subsidiary violated the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

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

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

Matson, Ross, McCord & Ice, of Indianapolis, Ind., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have vio-

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lated and are 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, Union Starch & Refining Co., is a corporation organized and existing under the laws of Indiana with its principal office and place of business at 301 Washington Street in the city of Columbus and State of Indiana. Respondent, Union Sales Corporation, is a corporation organized under the laws of the State of Indiana and has its principal office and place of business at 301 Washington Street, city of Columbus and State of Indiana. Respondent, Union Sales Corporation, is a wholly owned sales subsidiary of respondent Union Starch & Refining Co., through which products manufactured by Union Starch & Refining Co. are sold and distributed. Union Starch & Refining Co. owns the entire capital stock of Union Sales Corporation and controls and directs Union Sales Corporation.

PAR. 2. Respondent, Union Starch & Refining Co., owns and operates a plant at Granite City, Ill., and also owns a plant at Edinburg, Ind. These plants have a corn grinding capacity in excess of 19,000 bushels per day, with complete facilities for the finished fabrication of corn products both for household and industrial use. The Granite City plant has a corn grinding capacity of 15,000 bushels daily.

PAR. 3. For many years respondents have been and are 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 sirup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting sirup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of sirups.

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

The Union Starch & Refining Co., in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plants and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the States in which their factories are located across state lines to purchasers

thereof located in States other than the States in which respondents' said plants are 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 respondents have been and are 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 respondents have been and are 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 respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

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

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents 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 respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents 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 respondents 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 mo-

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nopolies 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 respondents Union Starch & Refining Co., a corporation, and Union Sales Corporation, a corporation, charging them with discriminating in price between different purchasers of respondents' various products 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 both respondents. Thereafter, pursuant to written notice to the respondents of the time, date, and place, hearings were commenced on June 17, 1940, before John P. Bramhall, an examiner designated by the Commission, at which hearing evidence in support of the charge made in the complaint was introduced by Frank Hier and P. R. Layton, attorneys for the Commission, and other evidence was introduced into the record by stipulation between counsel for the Commission and counsel for the respondents. Respondents further stipulated that they desired to offer no evidence in opposition to the charges contained in the complaint, and that they waived all intervening procedure, oral arguments, the filing of briefs, further hearings, and any report by the trial examiner upon the evidence, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Union Starch & Refining Co. and Union Sales Corporation, are corporations organized and existing under the laws of Indiana with their principal offices and place of business at 301 Washington Street in the city of Columbus and State of Indiana. Respondent, Union Sales Corporation, is a wholly owned sales subsidiary of respondent, Union Starch & Refining Co., through which products manufactured by Union Starch & Refining Co. are sold and distributed. Union Starch & Refining Co. owns the entire capital stock of Union Sales Corporation and directs and controls said respondent, Union Sales Corporation.

PAR. 2. For many years respondent, Union Starch & Refining Co., has been and is now engaged in the business of manufacturing and re-

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spondent Union Sales Corporation has been and is now engaged in the business of distributing and selling glucose or corn sirup unmixed. Such sirup is one of the principal products derived in the refining of corn.

PAR. 3. For the purpose of refining corn in the manufacture of such sirup Union Starch & Refining Co. owns and operates a corn refining plant located at Granite City, Ill., which plant has a corn grinding capacity in excess of 19,000 bushels per day with facilities for the finished fabrication of corn products, including such sirup. Respondent, Union Starch & Refining Co., also owns but does not operate a corn refining plant located at Edinburg, Ind.

PAR. 4. For many years in the course and conduct of its business respondent, Union Sales Corporation, has sold and shipped and does now sell and ship such sirup in commerce between and among the several States of the United States causing such sirup to be sold and shipped from said plant of the respondent, Union Starch & Refining Co., at Granite City, Ill., across State lines to purchasers thereof located in other States of the United States and in competition with other corporations engaged in similar lines of commerce.

PAR. 5. Most of such purchasers so located purchase such sirup, 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 sirup has been sold and delivered by respondents in several types and sizes of containers at prices per hundredweight which increase over the tank car price per hundredweight according to the size and type of container as follows:

Container	Price per hundred-weight over tank car	
Barrels.....	\$0.33	
Half barrels.....	0.58	
10-gallon kegs.....	0.98	
5-gallon kegs.....	1.08	
Returnable drums.....	0.13	Where there is no return freight on empty drums.
" ".....	0.18	Where return freight on empty drum is between 50 and 75 cents per hundredweight.
" ".....	0.23	Where return freight on empty drum is between 76 and 90 cents per hundredweight.
" ".....	0.28	Where return freight on empty drum is between 91 cents and \$1.
" ".....	0.33	Where return freight on empty drum is more than \$1.
Tank truck.....	0.10	Where delivery is made by respondents' truck.
" ".....	0.02	Where delivery is made by purchaser's truck.

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PAR. 6. Between June 19, 1936, and July 23, 1937, respondent has sold such sirup at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago, Ill., Danville, Ill., North Chicago, Ill., Dixon, Ill., Zion, Ill., and Milwaukee, Wis., than it has sold such sirup in containers of like size and type to purchasers located in said cities of Chicago, Ill., Danville, Ill., North Chicago, Ill., Dixon, Ill., Zion, Ill., and Milwaukee, Wis., and between July 23, 1937, and the present time respondent has sold such sirup to purchasers located in all cities other than Chicago, Ill., at higher prices per hundredweight than it sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and such higher prices were not uniformly higher but varied with the geographical location of the cities in which the purchasers paying the higher prices were located.

Thus, on the following dates respondent sold such sirup to such purchasers located respectively in each of the following cities at the delivered prices per hundredweight which are shown opposite such 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 container:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	\$2.94	\$3.04	\$2.29	\$2.09
Danville, Ill.	2.94	3.17	2.43	2.20
Louisville, Ky.	3.26	3.34	2.63	2.43
Chattanooga, Tenn.	3.34	3.42	2.71	2.51
Nashville, Tenn.	(¹)	3.40	2.69	2.49
Memphis, Tenn.	(¹)	(¹)	(¹)	2.49
Fort Worth, Tex.	(¹)	(¹)	(¹)	2.89
St. Louis, Mo.	3.11	3.20	2.47	2.27
St. Joseph, Mo.	3.32	3.40	2.69	2.49
Kansas City, Mo.	(¹)	3.40	2.69	2.49

¹ No sales.

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 August 1, 1937, until the present time.

PAR. 7. By selling such sirup at said different prices, as found in paragraphs 5 and 6, the differences between which prices not having been justified by respondent, it has discriminated in prices between such purchasers who have paid the different prices for such sirup.

PAR. 8. The result of said discriminations has been to place the unfavored purchasers paying the higher prices for such sirup under a competitive disadvantage.

Such sirup 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 sirup 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 sirup content, as well as of the total cost of manufacturing an extensive line of candies having a wide range of sirup contents. Said costs of the unfavored of such purchasers increase over said costs of such favored purchasers directly as the amount of the discrimination between them increases, and as the sirup content of the candy increases.

Many candies containing a substantial quantity of such sirup 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 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 sirup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher sirup 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 noncompetitive 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 weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry and may prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which respondents discriminate as found above.

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A further result of said discrimination has been to confer upon the favored purchasers receiving the benefit of said discriminations a competitive advantage. As compared with the unfavored purchasers, their costs and prices are lower, their profits greater. Such benefits can well lead to a domination by them of the candy industry.

Therefore the Commission finds that the discriminations found in paragraphs 5 and 6 have been or 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 respondents, Union Starch & Refining Co. and Union Sales Corporation, have 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 respondents, 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 respondents, and further hearings, oral argument, the filing of briefs, and a report by the trial examiner having been waived by the respondents; the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that respondents have 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 respondents, Union Starch & Refining Co. and Union Sales Corporation, their officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of glucose or corn sirup 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 sirup unmixed, of like grade and quality, either

directly or indirectly in the manner and degree as found by the Commission in paragraphs 5 and 6, 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 5 and 6 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 the Commission's findings as to the facts and conclusion.

4. From otherwise selling said glucose or corn sirup unmixed to some purchasers thereof at different prices 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 respondents 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 respondents from showing that their 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 respondents, Union Starch & Refining Co. and Union Sales Corporation, shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

A. SARTORIUS & COMPANY, INC. TRADING AS PLAT-NUM
PERL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3966. Complaint, Dec. 8, 1939—Decision Dec. 11, 1940*

Where a corporation engaged in interstate sale and distribution of manicure products, including nail protector and nail polish remover, in substantial competition with others engaged in sale and distribution of manicure products in commerce as aforesaid, and including some who do not use methods and engage in acts and practices below described—

(a) Represented in advertisements through such statements as "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails," that its said product was made from or contained olive oil and that by reason of presence of such oil it would improve or benefit the condition of dry, brittle nails, facts being quantity of olive oil therein contained was negligible, it could not be truthfully represented as an olive oil product, and olive oil contained therein was so small as to be incapable of relieving or improving to any appreciable extent condition of dry, brittle nails; and

(b) Represented through such statements as "Plat-Num Nail Protector * * * encourages growth * * * strengthens nails," disseminated in advertisements among prospective purchasers that its said product stimulated the growth of the nails and strengthened the same, facts being it did not accomplish such results and was wholly incapable of effecting the same;

With effect of misleading and deceiving consuming public into mistaken and erroneous belief that said representations were true and by reason thereof into purchasing substantial quantity of its said products, and with result, as consequence, that trade was unfairly diverted to it from its said competitors; to the substantial injury of competition in commerce:

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

Mr. Gerard A. Rault for the Commission.

Mr. Henry L. Finkelstein, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect