

Syllabus

IN THE MATTER OF

AMERICAN MAIZE-PRODUCTS 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 THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3805. Complaint, June 1, 1939—Decision, Mar. 15, 1941

Where a corporation engaged in manufacture of glucose or corn sirup unmixed, and in distribution and interstate sale thereof, mainly to candy manufacturer purchasers competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers of candy, in the production of many kinds of which said sirup is one of major raw materials used, accounting for as much as 90 percent of weight of some varieties and for a substantial part of the total cost of manufacture—

- (a) Sold its said sirup at its old and lower prices to some purchasers, while concurrently selling such sirup of like grade and quality to other purchasers at its new and higher prices, which exceeded by from 5 to 55 cents per hundredweight the old and lower figures; and
- (b) Sold and delivered its said sirup of like grade and quality to purchasers in several types and sizes of containers at prices per hundredweight which increased over the tank-car price per hundredweight according to size and type of container, with differentials ranging from 33 cents for barrels to \$1.08 for 5-gallon kegs, and from 10 cents for tank wagons and 13 cents for returnable drums to 33 cents for such drums, depending on presence or absence of return freight thereon and amount thereof;

With result that, through selling its said sirup at said varying prices, not shown by it as made in good faith to meet the equally low price of a competitor, and differences between which it did not justify, it discriminated in price between such purchasers who paid said various differing prices, costs of unfavored purchasers were increased over those of favored purchasers directly as the amount of the discrimination between them and the sirup content of the candy increased, necessitating substantially lower profits for such unfavored purchasers than would be the case in the absence of said discrimination, whether through absorption by them of higher sirup costs in event of their continued sale of their product at prices competitive with those of the favored purchasers, or through necessarily diminished sales, idle plant capacity, and increased overhead in the event of increase in price of their product to cover such higher costs; and

With result that, by reason of diminished ability of unfavored candy manufacturers paying said higher prices to compete, due to loss of profits as above set forth in the sale of their products, with those manufacturers paying the lower prices for such sirup, effect of such discriminations might be substantially to lessen competition between favored and unfavored purchasers, tend to create a monopoly in former, and injure, destroy, and prevent competition therewith:

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

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

Hall, Cunningham, Jackson & Haywood, of New York City, 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, American Maize-Products Co., is a corporation organized and existing under the laws of Maine with its principal office and place of business at 100 East Forty-second Street in the city of New York and State of New York.

PAR. 2. Respondent owns and operates a plant at Roby, Ind. This plant has a corn-grinding capacity in excess of 35,000 bushels per day, with complete facilities for the finished fabrication of all known 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 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.

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 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 competition 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

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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, American Maize-Products Co., charging it with discriminating in prices between different purchasers of respondent's various products in violation of subsection (a) of section 2 of said act, as amended.

Thereafter, on June 23, 1939, motion of the respondent was filed asking that the complaint be made more definite and certain, or, in the alternative, that the respondent be served with a bill of particulars specifying the acts complained of, or, in the alternative, that the complaint be dismissed, which said motion was denied by order of the Commission on June 30, 1939. On June 23, 1939, respondent likewise filed its answer to the complaint. Thereafter, on December 18, 1940, respondent, by its counsel, entered into a stipulation as to the facts with W. T. Kelley, chief counsel of the Commission, which stipulation provided that the facts therein set forth were to be made part of the record herein and were to be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument or the filing of briefs, all of which appears of record herein.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Maize-Products Co., is a corporation organized and existing under the laws of the State of Maine with its principal office and place of business at 100 East Forty-second Street in the city and State of New York.

PAR. 2. Respondent has for many years been and is now engaged in the business of manufacturing, distributing, and selling glucose or corn sirup unmixed, which is one of the principal products derived from the refining of corn. For the manufacture of such product, respondent owns and operates a corn-refining plant located at Roby,

Ind., which has a corn-grinding capacity in excess of 35,000 bushels per day with complete facilities for the manufacture of such product.

PAR. 3. For many years respondent has been and is now manufacturing such glucose or corn sirup unmixed at said plant and has sold and shipped and does now sell and ship such glucose or corn sirup unmixed, in commerce between and among the various States of the United States from Roby, Ind., to purchasers thereof located in other States, and in competition with other corporations engaged in similar lines of commerce.

PAR. 4. Most of such purchasers so located purchase such sirup which is of like grade and quality for use in the manufacture of candy, and 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.

PAR. 5. Respondent, since June 19, 1936, and while engaged in commerce as aforesaid after increasing the price of such sirup, has sold the same to some purchasers thereof at the former and lower price while concurrently selling such sirup of like grade and quality to other purchasers at the new and higher price. The differences between the former and lower prices and the new and higher prices referred to have varied from 5 to 55 cents per hundredweight.

PAR. 6. At all times since June 19, 1936, and while engaged in commerce as aforesaid, respondent has also sold and delivered such sirup of like grade and quality to purchasers 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 hundredweight over tank-car price per hundredweight	
Tank wagons.....	\$0. 10	
Returnable drums.....	0. 13	Where there is no return freight on empty drums.
Do.....	0. 18	Where the return freight on empty drums is between 50 and 75 cents per hundredweight.
Do.....	0. 23	Where the return freight on empty drums is between 76 and 90 cents per hundredweight.
Do.....	0. 28	Where the return freight on empty drums is between 91 cents and \$1.
Do.....	0. 33	Where the return freight on empty drums is more than \$1.
Barrels.....	0. 33	
Half barrels.....	0. 58	
10-gallon kegs.....	0. 98	
5-gallon kegs.....	1. 08	

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PAR. 7. By selling such sirup at said different prices as found in paragraphs 5 and 6 above respondent has discriminated in price between such purchasers who have paid the various different prices. Respondent has not justified such differences nor shown that any of such prices were made in good faith to meet the equally low price of a competitor.

PAR. 8. Such sirup is one of the major raw materials used in the production of many kinds of candy manufactured by each of such candy manufacturers, accounting for as much as 90 percent or more of the weight of some varieties and for a substantial part of the total cost of manufacturing such candies; and said discriminations in the price of such sirup increase the costs of the unfavored purchaser over the costs of the favored purchasers directly as the amount of the discrimination between them and as the sirup content of the candy increases. By reason of such higher costs, the profits of the unfavored purchasers would be substantially lower than they would be if it were not for the discriminations.

Such effect on profits would result where unfavored purchasers sold candy manufactured by them at prices competitive with the prices of candy manufactured by the favored purchasers. Under such circumstances the volume of sales by the unfavored purchasers would not be affected, but, due to their absorption of the higher sirup costs, their respective margins of profit, as well as total profits, would be reduced below what they would be if it were not for the discrimination.

Similarly, where, in an effort to recover such higher sirup costs, unfavored purchasers sold such candy at prices higher than those charged by favored purchasers, their respective volume of sales would undoubtedly decline commensurate in some degree to the amount by which prices were increased. With such decline in volume of sales would come unused plant capacity and increased per-unit overhead costs; and the price of the candy would have to be increased sufficiently, therefore, to cover both the higher sirup costs and higher overhead costs, if the margin of profit available in the absence of discrimination was to be preserved. Even though such margin of profit was not impaired it would not be realized on the lost sales, and total profit would be diminished to the extent that volume of sales was reduced.

The loss of profits either by absorption of the higher sirup costs or from loss of sales resulting from increasing prices to recover such higher sirup costs would generally diminish the ability of those candy manufacturers paying the higher prices for such sirup to

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compete in the sale of their products with candy manufacturers paying the lower prices for such sirup.

Therefore, the Commission finds that the discriminations found in paragraphs 5 and 6 may substantially 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, American Maize-Products Co., 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 filed herein by the respondent, American Maize-Products Co., and the stipulation of facts entered into between the chief counsel for the Commission and counsel for the respondent and filed herein, wherein counsel for respondent states his desire to waive hearings on the charges set forth in the complaint and not to contest the proceeding, and the Commission having made its findings as to the facts and its conclusion based upon the stipulation of facts wherein the respondent admitted the facts solely for the purpose of this proceeding, which findings and conclusion are hereby made a part hereof, that said respondent violated 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, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

It is ordered, That respondent, American Maize-Products Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of glucose or corn sirup unmixd in interstate commerce to purchasers described in said stipulation of facts, do forthwith cease and desist:

1. From discriminating in price between different purchasers of glucose or corn sirup unmixd of like grade and quality, either directly or indirectly, in the manner and degree as found in paragraphs 5 and 6 of the Commission's findings as to the facts and conclusion;

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from continuing or resuming such discriminations in price as so found by the Commission and from otherwise discriminating in price in manner and degree substantially similar to such discriminations as so found by the Commission.

2. From otherwise selling said product to some of the aforesaid 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, providing that nothing shall prevent price differences which make only due allowances 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 any equally low price of a competitor.

It is further ordered, That respondent, American Maize-Products Co., 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.

Complaint

IN THE MATTER OF

LOUIS GOLDENBERG, MORRIS ZIPPER AND HARRY
FAERMAN, TRADING AS DIAMOND CAP COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3230. Complaint, Sept. 24, 1937—Decision, Mar. 19, 1941*

Where three individuals engaged in manufacture of caps from felts and other materials obtained from old, used, and second-hand hats purchased from various sources and thereafter cleaned, steamed, ironed, dyed, and shaped by them into the form of caps, which were fitted with new visors, buttons, trimmings, sweatbands, and size labels so that they had the appearance of new caps made from felt materials which had never been worn or used, and in interstate sale and distribution of said products in substantial competition with others, including manufacturers of such articles from new materials—

Sold their said caps with no disclosure in invoicing and billing, and with no label, marking, or designation of any kind to indicate that they were made from old hat bodies, to retailers, jobbers, and wholesalers by whom said caps were resold to purchasing public without disclosing in any way the fact that they were made from previously worn felts;

With the result that they were enabled to and did undersell manufacturers who produced similar caps from felt and other materials which were entirely new, and with tendency and capacity to induce many wholesale and retail dealers and a substantial portion of purchasing public to purchase their products manufactured from old materials in the erroneous and mistaken belief that they were made from new and unused materials, and, as direct consequence of such erroneous belief to divert trade unfairly to themselves from competitors, of whom many did not misrepresent the quality, kind, or type of material of which their caps were made:

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.

Before *Mr. John W. Addison, Mr. John J. Keenan, Mr. Robert S. Hall, and Mr. Randolph Preston*, trial examiners.

Mr. George Foulkes and Mr. Robert Mathis, Jr., for the Commission.

Mr. Charles P. Bloome and Mr. Samuel R. Wurtman, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-