

IN THE MATTER OF
NATIONAL GRAIN YEAST CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSECS. (a) AND (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3903. Complaint, Sept. 29, 1939—Decision, July 16, 1941

Where a corporation engaged in the manufacture of bakers' yeast, and in the competitive interstate sale and distribution thereof—

- (a) Discriminated in price between competing purchasers of its products of like grade and quality, by giving and allowing some purchasers different prices than those given and allowed other purchasers competitively engaged in the sale and distribution of bread and allied products, in thus selling its said product at differentials amounting, in some instances to 7 percent and upward, and conferring thereby upon favored customers substantial benefits, which were vital factors in competition;
- (b) Discriminated in price between competing purchasers of its products by delivering to certain of them large quantities of yeast without specific charge, in addition to the yeast sold to them, while concurrently selling yeast to other purchasers at the same price for the product billed, but without delivering free additional quantities, so that the actual cost to those favored was less by 5 percent or more than the actual cost to non-favored customers; and favored customers were substantially and competitively benefited;
- (c) Discriminated in price between competing purchasers by granting to certain of them cash discounts of 1 to 2 percent not granted to others who paid in the same manner and within the same time;

Result of which discriminations in price had been and might be substantially to lessen competition in the line of commerce concerned, and might be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between its purchasers who received the benefits of such discriminations and those who did not;

Held, That such discriminations in price violated subsection (a) of section 2 of an act of Congress approved October 15, 1914, as amended by an act of Congress approved June 19, 1936; and

Where said corporation, engaged as aforesaid—

- (d) Made monthly payments to various bakers' associations upon sales to members, pursuant to its policy and practice of contracting with such associations for the sale of yeast to their members at fixed prices, and for payment of commission or brokerage thereon, which inured to the benefit of the members through dividends paid them by their associations, notwithstanding no services of any sort were rendered to it by them in connection with such sales or purchases of yeast:

Held, That said commission or brokerage payments, as above set forth, violated subsection (c) of section 2 of an act of Congress approved October 15, 1914, as amended by an act of Congress approved June 19, 1936; and

Where said corporation, engaged as aforesaid—

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(e) Systematically gave and offered to give gratuities consisting of liquors, cigars, meals, money, and other personal property and entertainment of various kinds to employees of baker customers and prospective customers of it and of its competitors, secretly and without the knowledge and consent of their employers, with the purpose of inducing said employees themselves to purchase, or to induce them to influence their respective employers to purchase, its products, and to refrain, respectively, from purchasing those of its competitors;

With capacity and tendency to induce the purchase of its products by various bakers, and with effect of diverting trade from competitors to it, with resulting injury to competition in commerce:

Held, That said acts and practices in giving money and things of value, under the circumstances set forth, were all to the prejudice of the public and of its competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. P. C. Kolinski for the Commission.

Mr. Harold Goldman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions 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" (U. S. C. title 15, sec. 13 of the Clayton Act) as amended, and by virtue of said authority vested in it by said acts, the Federal Trade Commission, having reason to believe that National Grain Yeast Corporation, hereinafter referred to as respondent, has violated the provisions of said Federal Trade Commission Act and subsections (a) and (c) of section 2 of said Clayton Act as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. National Grain Yeast Corporation is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 810 Mill Street, Belleville, N. J.

PAR. 2. Respondent, since June 19, 1936, has been and now is engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes said yeast to be shipped and transported in commerce from its plant in the State of New Jersey to the purchasers thereof in and among the various States of the United States, and there is and has been at all times herein mentioned a current of trade and commerce in

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respondent's yeast between the State wherein respondent's plant is located and various other States of the United States.

PAR. 3. Said respondent in the course and conduct of its business since June 19, 1936, has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bakers' yeast in commerce.

PAR. 4. In the course and conduct of its business as aforesaid the respondent has been and now is 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 various States of the United States. To illustrate, during the year of 1937 respondent sold 208,400 pounds of bakers' yeast to Krug Baking Co., 138 Ninety-fourth Avenue, Jamaica, Long Island, N. Y., at 11 cents per pound, and during the same period sold Dugan Brothers, Two Hundred and Twenty-second Street and Ninety-eighth Avenue, Queens, Long Island, N. Y., a competitor, 329,850 pounds of bakers' yeast at 10 cents per pound, less 1 percent, thus affording the last mentioned purchaser a saving of \$3,628.35 during said period, upon the basis of the price charged the first-mentioned purchaser. Also during the same period respondent sold Mersels Darling Bread Co., 565 Barry Street, Bronx, N. Y., 23,420 pounds of bakers' yeast at 13 cents per pound, and sold Pechter Baking Co., One Hundred and Seventy-third Street and Park Avenue, Bronx, N. Y., a competitor, 40,927 pounds of bakers' yeast at 11 cents per pound, thus affording the last-mentioned purchaser a saving of \$818.54 during said period, upon the basis of price charged to first-mentioned purchaser.

PAR. 5. Further discrimination in price between different competing purchasers of its products is brought about as a result of respondent delivering large quantities of bakers' yeast to certain of its purchasers for which no specific charge is made, in addition to yeast actually sold and delivered to these same purchasers for which a specific price is charged, thus reducing the cost to said favored customers of the yeast actually purchased, while at the same time other purchasers competitively engaged in the sale of bread and allied products with the said favored purchasers and paying the same price per pound for said product, are not furnished such additional yeast. To illustrate, during the month of November 1936, Saperstein, 676 Allerton Avenue, Bronx, N. Y., purchased 350 pounds of yeast at 13 cents

per pound and in addition to said purchased yeast respondent delivered 290 pounds of yeast for which no charge was made, while during the same period Lang's, 691 Allerton Avenue, Bronx, N. Y., a competitor, purchased 342 pounds of bakers' yeast at 13 cents per pound and respondent delivered no additional yeast to said purchaser without charge.

PAR. 6. Respondent further discriminates in price between competing purchasers by granting cash discounts of 1 percent to 2 percent to certain of its purchasers which are not granted to others who pay in the same manner and within the same time as those receiving such discounts.

PAR. 7. The effect of such discrimination in price as set forth in paragraphs 4, 5, and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged, and may be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive such benefits.

PAR. 8. The foregoing alleged acts and practices are in violation of subsection (a) of section 2 of the Clayton Act as amended.

Count 2

PARAGRAPH 1. The allegations of paragraphs 1, 2, and 3 of Count 1 are hereby incorporated as though fully set forth.

PAR. 2. In the course and conduct of its business as aforesaid, respondent pursues a policy and practice of contracting with various bakers' associations under the terms of which contracts the said respondent sells its bakers' yeast to the members of said associations at prices fixed in said contracts and makes monthly payments to said associations of a commission or brokerage upon the sale to said members; that said payments so made inure to the benefit of the members of said associations through the payment of dividends to the members by the associations; that no services of any sort or character are rendered by said associations to respondent in connection with such sale or purchase of said yeast.

PAR. 3. The foregoing alleged acts and practices are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Count 3

PARAGRAPH 1. The allegations of paragraphs 1, 2, and 3 of Count 1 are hereby incorporated as though fully set forth.

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PAR. 2. In the course and conduct of its business respondent during a period of more than 3 years last past has systematically given and offered to give gratuities consisting of liquor, cigars, meals, money, and other personal property and entertainment of various kinds to employees of bakers, both its customers and prospective customers and its competitors' customers and prospective customers, secretly and without the knowledge and consent of their employers, with the design and purpose of inducing said employees to purchase respondent's product and to refrain from purchasing the product of its competitors or to induce said employees to influence their respective employers to purchase the product of respondent and to refrain from purchasing that of respondent's competitors.

PAR. 3. The acts and practices of respondent as herein set forth are calculated to and have the capacity and tendency to induce the purchase of respondent's product by various bakers and have tended to divert trade and have diverted trade from competitors of respondent, to the respondent herein.

PAR. 4. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions 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 by an Act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on September 29, 1939, issued and on September 30, 1939, served its complaint in this proceeding upon the party respondent named in the caption hereof, charging it with violating the provisions of section 5 of the Federal Trade Commission Act, and with violating the provisions of subsection (a) and (c) of section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations set forth in said complaint, with the exception of the illustrations therein set forth regarding specific price discriminations, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. There-

after, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and a stipulation as to certain facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 5 of the Federal Trade Commission Act and subsections (a) and (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, have been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Grain Yeast Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 810 Mill Street, Belleville, N. J.

PAR. 2. Respondent, since June 19, 1936, has been and now is engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes its said yeast to be shipped and transported, in commerce, from its plant in the State of New Jersey to the purchasers thereof in and among the various States of the United States, and there is and has been at all times since the above date a current of trade and commerce in respondent's yeast between the State of New Jersey and various other States of the United States.

PAR. 3. Since June 19, 1936, respondent in the sale and distribution of its bakers' yeast has been, and now is, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bakers' yeast, in commerce.

PAR. 4. Respondent, since June 19, 1936, has discriminated in price and is now discriminating in price between different competing purchasers of its products of like grade and quality by giving and allowing some purchasers of its bakers' yeast used in the manufacture of bread and allied products different prices from those given and allowed other of its said purchasers competitively engaged one with the other in the sale and distribution of bread and allied products. In some instances respondent sold bakers' yeast of like grade and quality and in like quantities to competing customers at different prices wherein the differential between such prices amounted to 7 percent and upwards.

PAR. 5. Respondent has discriminated, and is further discriminating, in price between different purchasers of its products competitively engaged in the sale of bread and allied products by delivering large quantities of its bakers' yeast, without specific charge therefor, to

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certain purchasers in addition to its bakers' yeast actually sold and delivered to these purchasers, thereby substantially reducing the average cost of its said yeast to such purchasers. Respondent concurrently sells its said yeast to other purchasers but does not deliver in addition to the quantities purchased yeast for which no specific charge is made, with the result that while both classes of purchasers may be charged the same price for yeast sold and billed, the actual cost to those who receive additional yeast without specific charge therefor, is less, by 5 percent or more, than the actual cost to the nonfavored customers.

PAR. 6. Respondent's acts and practices as set forth in paragraphs 4 and 5 constitute discriminations in price between its customers, and the benefits of such discriminations in price to the favored customers were substantial in nature and constituted material and vital factors of competition.

PAR. 7. Respondent has discriminated, and is now further discriminating, in price between competing customers by granting cash discounts of 1 percent to 2 percent to certain of its purchasers which are not granted to other purchasers who pay in the same manner and within the same time as those receiving such discounts.

PAR. 8. The effect of such discriminations in price described in paragraphs 4, 5, and 7 above has been and may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive such benefits.

PAR. 9. In the course and conduct of its business as aforesaid, respondent pursues a policy and practice of contracting with various bakers' associations under the terms of which contracts the said respondent sells its bakers' yeast to the members of said associations at prices fixed in said contracts and makes monthly payments to said associations of a commission or brokerage upon the sales to said members. The payments made to said associations inure to the benefit of the members of such associations through the payment of dividends to the members by the associations. No services of any sort or character are rendered by said associations to respondent in connection with such sales or purchases of said yeast.

PAR. 10. In the course and conduct of its business, respondent, during a period of more than 3 years last past, has systematically given and offered to give gratuities consisting of liquors, cigars, meals, money, and other personal property and entertainment of various kinds to employees of bakers, both its customers and prospective customers,

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and its competitors' customers and prospective customers, secretly and without the knowledge and consent of their employers, with the design and purpose of inducing said employees to purchase respondent's product and to refrain from purchasing the product of its competitors or to induce said employees to influence their respective employers to purchase the product of respondent and to refrain from purchasing that of respondent's competitors.

PAR. 11. The acts and practices of respondent as set forth in paragraph 10 are calculated to, and have the capacity and tendency to, induce the purchase of respondent's products by various bakers, and have tended to, and do, divert trade from competitors of respondent to the respondent, with resulting injury to competition in commerce between and among the various States of the United States.

CONCLUSION

The discriminations in price by respondent as hereinabove set out, and the commission or brokerage payments made under the conditions found, violate subsections (a) and (c), respectively, of section 2 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act); and the acts and practices of respondent in giving money and things of value under the circumstances found as aforesaid are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the substitute answer of the respondent, in which answer respondent admits all the material allegations of said complaint with the exception of the illustrations therein set forth regarding specific price discriminations and states that it waives all intervening procedure and further hearing as to said facts, and a stipulation of facts filed herein, and the Commission being of the opinion that said respondent has violated the provisions of the Federal Trade Commission Act and subsections (a) and (c) 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), and having made its findings as to the facts and its conclusion, which findings as to the facts and its conclusion are hereby made a part hereof.

It is ordered, That the respondent, National Grain Yeast Corporation, its officers, representatives, agents, and employees, directly or in-

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directly, in connection with the offering for sale, sale and distribution of bakers' yeast in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from the discriminations in price as found in paragraphs 4, 5, and 7 of the findings of fact or from otherwise discriminating in price between different purchasers of bakers' yeast of like grade and quality where the effect of such discriminations may be substantially to lessen competition or to injure, destroy, or prevent competition with respondent or any such purchaser unless the differential in price in any such discrimination makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities are to such purchasers sold or delivered.

It is further ordered, That the respondent, National Grain Yeast Corporation, its officers, representatives, agents, and employees, in connection with the sale of bakers' yeast in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist:

1. From paying or allowing, directly or indirectly, in any manner or fashion or under any guise whatever, any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to associations of bakers or to any of their officers, representatives, agents, or employees upon or in connection with the purchase of bakers' yeast made by members of such associations.

2. From paying or granting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof to any purchaser on purchases for such purchaser's account or to an agent, representative or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of such purchaser of respondent's goods.

It is further ordered, That respondent, National Grain Yeast Corporation, its officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of bakers' yeast in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from giving or paying money or other things of value to employees of its customers or prospective customers, without the knowledge or consent of such customers, as payments for having induced or recommended the use of respondent's yeast by their employers, or for the purpose of inducing such employees to purchase or to recommend the purchase of respondent's yeast for use by their employers.

It is further ordered, That the respondent, National Grain Yeast Corporation, 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.

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IN THE MATTER OF
A. M. DRUCKMAN, DOING BUSINESS AS LINCOLN CHAIR
& NOVELTY COMPANY

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

Docket 4445. Complaint, Jan. 10, 1941—Decision, July 16, 1941

Where an individual engaged, as pretended manufacturer, in offer and interstate sale and distribution to retailers, of wooden furniture and allied items which he caused to be transported from the factories where made, bearing labels and shipping tags of Lincoln Chair & Novelty Co., trade name employed by him, and shipped to purchasers under his bill of lading; In advertisements in trade magazines, catalogs, and circulars distributed to retailers, recognizing a preference on the part of purchasers for dealing directly with a manufacturer—

(a) Represented and implied that said Lincoln Chair & Novelty Co., made the merchandise in question, and that it maintained, controlled or operated factories for such purposes in Massachusetts, New York, Indiana, and Missouri, through such statements as "We make a complete line of: Sunroom Suites, Dinette Suites," etc., and "FACTORIES: Gardner, Mass., Jamestown, N. Y., Richmond, Ind., Springfield, Mo.," and "* * * shipped f. o. b. our New York State Plant" or "* * * our Missouri Plant"; and

(b) Represented that the offices for such factories were located at its business address in New York City, through such statements as "EXECUTIVE OFFICES. 146 West 46th Street, New York, N. Y." following or adjacent to enumeration of its supposed factories, and statements in catalogs and circulars that, while all merchandise was shipped f. o. b. factory, all correspondence and orders were to be directed to the executive offices in New York City;

Facts being the merchandise thus advertised was not made by such Lincoln Chair & Novelty Co., he did not own, operate, or control any furniture factories making it, and was not connected with any which maintained executive offices at his business address in New York City;

With effect of causing a substantial number of the purchasing public to believe that he was the manufacturer of the merchandise offered and sold by him, whereby many prospective purchasers had been and were likely to be influenced and induced to purchase from him the products so represented:

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

Mr. Eldon P. Schrup for the Commission.

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. M. Druckman, an individual, trading and doing business under the name and style