

Complaint

IN THE MATTER OF
REPUBLIC YEAST 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 4367. Complaint, Oct. 30, 1940—Decision, July 18, 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 said product of like grade and quality, through different prices allowed or extended, making use, among other things, of a pricing policy under which its said yeast was sold to customers competitively engaged in the sale and distribution of bread and allied products, who purchased approximately equivalent quantities and at concurrent periods of time, at prices of 10, 11, 12, 13, and 14 cents per pound;
- (b) Discriminated in price between purchasers by furnishing to certain of them free of charge with their purchases, large quantities of its yeast in varying amounts, so that customers purchasing quantities ranging from 78 pounds to 1,554 pounds at prices ranging from 12 to 10 cents secured their yeast at actual costs ranging from 3.4 to 5.8 cents; while contemporaneously selling its yeast to other customers, competitively engaged with those thus favored, at prices of 10, 11, and 12 cents a pound, but with no free product furnished therewith; and
- (c) Discriminated between competing purchasers by granting to certain of them cash discounts of 1 or 2 percent, which it did not grant to others who paid in the same manner and within the same time as those so favored;

Result of which discriminations in price, under which beneficiaries were given substantial advantages constituting vital factors in competition, and not falling within the saving provisos of the Act in question, might be substantially to injure competition in the line of commerce involved, and also to injure competition between those of its purchasers in the baking industry who received the discriminatory benefits and those who did not:

Held, That said corporation, by so discriminating in price between different competing purchasers of its said bakers' yeast of like grade and quality violated the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the party 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 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), hereby issues its complaint, stating its charges with respect thereto as follows:

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PARAGRAPH 1. Respondent Republic Yeast Corporation is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and plant located at 740 Frelinghuysen Avenue, Newark, N. J. Prior to December 1, 1939, respondent's corporate name was Brass Yeast Corporation.

PAR. 2. Respondent since June 19, 1936, has been and is now 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 purchasers thereof in and among the various States of the United States and there has been at all times herein mentioned a current of trade and commerce in 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, partnerships, firms, and individuals engaged in 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 with such favored purchasers in the sale and distribution of bread and allied products within the various States of the United States. Among the methods used by respondent in accomplishing such discrimination has been a pricing policy under which its product has been sold to customers competitively engaged, in approximately equivalent quantities and at concurrent periods of time at prices of 10, 11, 12, 13, and 14 cents per pound.

PAR. 5. Further discrimination in price between different competing purchasers of its product is brought about as a result of respondent making free delivery of large quantities of bakers' yeast to certain of its purchasers. Such receipt of free yeast reduces the cost to such favored purchasers of the yeast purchased by them, while at the same time other purchasers competitively engaged with said favored purchasers and paying the same price per pound for said product are not furnished such additional free yeast. In accomplishing this discrimination respondent has made free deliveries of yeast ranging in amount per customer from 20 pounds to 1,121 pounds per month. In the case of some of these free deliveries, the cost of yeast

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has been reduced to favored purchasers in this manner: One customer purchasing 247 pounds of yeast at 12 cents per pound received 316 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 5.2 cents; another customer purchasing 1,554 pounds of yeast at 10 cents per pound received 1,121 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 5.8 cents; another customer purchasing 78 pounds of yeast at 12 cents per pound received 193 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 3.4 cents; and another customer purchasing 158½ pounds of yeast at 11 cents per pound, received 248 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 4.2 cents. At the time of these free deliveries of yeast, respondent sold yeast to other of its customers competitively engaged with those receiving free deliveries of yeast at price of 10, 11, and 12 cents per pound, and did not accompany such sales with deliveries of free yeast.

PAR. 6. Respondent further discriminates in price between competing purchasers by granting cash discounts of 1 percent and 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. 7. The effect of such discriminations in price as set forth in paragraphs 4, 5, and 6 hereof may be substantially to injure competition in the line of commerce in which respondent and its competitors are engaged, and also to injure competition with those of respondent's purchasers in the baking industry who receive the benefits of such discriminations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 the 30th of October 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Republic Yeast Corporation, charging it with violation of the provisions of subsection (a) of section 2 of the said act as amended. After the issuance and service of said complaint the respondent filed its answer, in which it admitted all the material allegations of fact

set forth in said complaint and waived all intervening procedure and further hearing as to said facts.

Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Republic 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 740 Frelinghuysen Avenue, Newark, 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 its said business it causes its said yeast to be shipped and transported in commerce from its plant in the State of New Jersey to purchasers thereof located in 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. Respondent, since June 19, 1936, in the sale and distribution of its bakers' yeast, has been and now is in substantial competition with other corporations and with individuals and partnerships engaged in the business of manufacturing bakers' yeast and selling and distributing same to the purchasers thereof located in States of the United States other than the State of origin of such shipments.

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 its bakers' yeast, used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged with such favored purchasers in the sale and distribution of bread and allied products within the various States of the United States. Among the methods used by respondent in accomplishing such discrimination has been a pricing policy under which its product has been sold to customers competitively engaged, in approximately equivalent quantities and at concurrent periods of time, at prices of 10, 11, 12, 13, and 14 cents per pound.

PAR. 5. Respondent, since June 19, 1936, has further discriminated and now discriminates in price between purchasers of its products, by furnishing to certain of its customers referred to in paragraph 4 hereof, free of charge with their purchases, large quantities of its yeast; such receipt of free yeast reduces the cost to such favored purchasers of the yeast purchased by them, while at the same time other purchasers, competitively engaged with said favored purchasers and paying the same price per pound for said product, are not furnished such additional free yeast. In accomplishing this discrimination, respondent has furnished, free of charge to its favored customers, yeast ranging in amounts per customer from 20 pounds to 1,121 pounds per month, and the cost of yeast to customers so favored has been reduced in the following manner:

One customer purchasing 247 pounds of yeast at 12 cents per pound, received 316 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 5.2 cents;

Another customer purchasing 1,554 pounds of yeast at 10 cents per pound, received 1,121 additional pounds of yeast free of charge, reducing the cost of yeast actually purchased to 5.8 cents;

Another customer purchasing 78 pounds of yeast at 12 cents per pound received 193 additional pounds of yeast free of charge, reducing the cost of yeast actually purchased, per pound to 3.4 cents;

Another customer purchasing 158½ pounds of yeast at 11 cents per pound, received 248 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 4.2 cents.

At the time of furnishing yeast free of charge, respondent sold yeast to other of its customers referred to in paragraph 4 hereof, who were competitively engaged with those receiving the free yeast, at prices of 10, 11, and 12 cents per pound, and did not furnish free yeast with such sales.

PAR. 6. Respondent has further discriminated and now discriminates between purchasers referred to in paragraph 4 hereof, by granting cash discounts of 1 percent or 2 percent to certain of said purchasers which it does not grant to other of its said purchasers who pay in the same manner and within the same time as those receiving such discounts.

PAR. 7. Respondent's acts and practices as set forth in paragraphs 4, 5, and 6 hereof, constitute discriminations in price between its said customers and the advantages given the beneficiaries of such discriminations were and are substantial in nature and constitute material and vital factors in competition.

PAR. 8. The effect of such discrimination in price as set forth in paragraphs 4, 5, and 6 hereof, may be substantially to injure com-

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petition in the line of commerce in which the respondent and its competitors are engaged, and also to injure competition between those of respondent's purchasers in the baking industry who receive the benefits of such discriminations and those purchasers who are not so favored.

PAR. 9. The respondent does not contend, either in its answer or otherwise, that the discrimination charged in the complaint and admitted in its answer come within any of the provisos or exceptions contained in said act of Congress (title 15, sec. 13, of the Clayton Act as amended).

CONCLUSION

The respondent, Republic Yeast Corporation, having by its answer admitted the material facts charged in the complaint, the Commission concludes that said respondent, by discriminating in price between different competing purchasers of its bakers' yeast of like grade and quality, in the manner set forth in paragraphs 4, 5, and 6 hereof, has violated and is violating the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That the respondent Republic Yeast Corporation, its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, 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 6 of the findings of fact, or otherwise discriminating in price between different purchasers of its bakers' yeast of like grade and quality, where the effect of such discrimination 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

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such discrimination makes only due allowance for difference in the cost of manufacture, sale, or delivery resulting from different methods or quantities in which said commodities are to such purchasers sold or delivered.

It is further ordered, That the respondent, Republic 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 the order to cease and desist herein set forth.

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IN THE MATTER OF
EDUCATORS ASSOCIATION, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3139. Order, July 23, 1941

Modified order, pursuant to provisions of section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission, on March 9, 1939, 28 F. T. C. 1006, made its findings and conclusion, and issued cease and desist order, and (2) Circuit Court of Appeals for the Second Circuit, on March 24, 1941, in *Educators Association, Inc., et al. v. Federal Trade Commission*, 118 F. (2d) 562, 32 F. T. C. 1870, issued its decree modifying paragraph (1) of said order and affirming all other paragraphs thereof, and directed Commission to modify its order accordingly—

Requiring respondent corporation, its officers, etc., and various other individuals, individually and trading under trade name and style of Educators Association, their representatives, etc., in connection with offer, etc., in commerce, of a students' reference book entitled "The Volume Library," forthwith to cease and desist from (1) using the words "Educators Association" as a corporate or trade name, or otherwise in aforesaid connection, etc., except when qualified as in said order set forth; (2) representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to them without adequately and fully disclosing all terms and conditions; and (3) representing or implying that they or their representatives, etc., are connected in any manner with public schools, etc., or that said or other similar publication is prescribed as a textbook or required to be used in connection with school work.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding is coming on for further hearing before the Federal Trade Commission, and it appearing on March 9, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondents had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on March 24, 1941, the United States Circuit Court of Appeals for the Second Circuit issued its decree modifying paragraph 1 of the aforesaid order of the Commission, and affirming all other paragraphs of the aforesaid order, and directed the Commission to modify its aforesaid order to cease and desist in accordance with the aforesaid decree;

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said court decree.

It is ordered, That the respondent, Educators Association, Inc., its officers, representatives, agents, and employees, and the respondents, Leo L. Tully, Oron E. Richards, and Donald W. Henry, individ-