

IN THE MATTER OF  
THE C. F. SAUER COMPANY

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

*Docket 3646. Complaint, Sept. 29, 1939<sup>1</sup>—Decision, July 31, 1941*

Where a corporation engaged in the manufacture of mayonnaise and salad dressing in its Greenville, S. C., plant, and in manufacture, packaging, or compounding of extracts, spices, tea, pepper, drugs, insecticides, and other commodities at its Richmond, Va., plant, and in interstate sale and distribution of such products to wholesale grocers, retail chain grocers, and retail grocers;

- (a) Sold its food product of like grade and quality, for use, consumption and resale within the United States, to some purchasers at higher prices than those charged to competing purchasers, and at differentials varying from approximately 5 percent to 25 percent and such that the net price in some cases was lower to the retail chain grocer than to the wholesale grocer to such an extent that the former sold products at retail at a price lower than that at which the wholesaler could purchase such products from it, and such that purchasers charged the lower prices resold products at prices which were only slightly higher than, as low as, or lower than, those at which competing resellers were able to purchase said products from it, so that the latter were unable to resell except at a loss or at insufficient profit, such products, with the result that such material price differences did and might injure, prevent, or destroy competition:

*Held*, That said discriminations in price were in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and Where said corporation, in consideration of and as compensation for advertising services and facilities contracted to be furnished or furnished by some customers in connection with the handling and sale of said food products—

- (b) Contracted to pay and paid various sums, or in lieu thereof contracted to issue and issued credit memoranda in amounts varying from 5 to 10 percent of the net prices charged by it, while issuing no credit memoranda to other customers, competitive with those compensated as aforesaid, which were willing and able to furnish such services and facilities, and in some instances offered to do so, but offers of which were refused by it:

*Held*, That said payments and allowances, as above set forth, were in violation of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John W. Addison*, trial examiner.

*Mr. Edward S. Ragsdale* for the Commission.

*Mr. Simon Michelet*, of Washington, D. C., for respondent.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof and hereinafter

<sup>1</sup> Amended.

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 amended complaint, stating its charges with respect thereto as follows:

*Count 1*

PARAGRAPH 1. The respondent, C. F. Sauer Co., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 2,000 West Broad Street, in the city of Richmond, State of Virginia. The respondent is engaged in manufacturing, selling, and distributing numerous grocery products, and owns and operates two manufacturing plants, one located in Greenville, S. C., and one located in Richmond, Va. Mayonnaise and salad dressing are manufactured at respondent's plant located in Greenville, and are sold and distributed from said plant, and from respondent's plant at Richmond. Extracts, spices, tea, pepper, drugs, insecticides and other commodities are manufactured, processed and packaged at, and are sold and distributed from respondent's plant located at Richmond.

The respondent has sold, and sells, its commodities, in general, to three groups of customers: wholesale grocers, retail chain grocers, and retail grocers.

Respondent facilitates its sales by the use of a large staff of traveling salesmen, numbering approximately 70, who travel in the various States of the United States securing orders, which are forwarded to the home office in Richmond, Va., for execution. Many additional orders are secured from customers through the mails after solicitation by salesmen and others.

PAR. 2. Since June 19, 1936, in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities, in the aforesaid plants, and has sold, shipped, and does now sell and ship, such commodities in commerce between and among the various States of the United States from the States in which its factories are located, across State lines to purchasers thereof located in States other than the States in which respondent's said plants are located.

PAR. 3. Since June 19, 1936, 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, directly and indirectly discriminating in price between different purchasers of commodities of like grade and

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quality, which commodities are sold for use, consumption, and 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 such commodities are sold to other purchasers generally competitively engaged with the favored purchasers.

Respondent effects said discriminations by granting and allowing larger discounts and rebates from list prices and lower net prices to some of such purchasers than to others. The extent of said discriminations in price varies from differentials of approximately 5 percent to differentials of approximately 33 percent, depending upon the commodity sold and the customer, or either.

PAR. 4. Dixie Home Stores is a corporation organized and existing, since approximately May 1937, under the laws of the State of South Carolina. It is engaged in business as a retail grocery chain, and has its principal place of business, purchasing agent, and warehouse in Greenville, S. C. It has purchased and received delivery of approximately \$6,000 worth of commodities from respondent each month from approximately May 1937 to date, which commodities are destined to be and are distributed by Dixie Home Stores through its own facilities to approximately 170 retail grocery stores which it owns and operates. A large number of said stores are located in all sections of South Carolina and in the western section of North Carolina, and a few are located in the northeastern section of Georgia. Each of said stores is in competition in those areas with other persons, firms, partnerships, and corporations, who are similarly engaged in the grocery business and purchase commodities of like grade and quality from respondent.

Dixie Home Stores was organized and brought into existence about May 1937 by merging and consolidating two retail grocery chains, namely, Dixie Stores and Home Stores, each of which, prior to consolidation and merger, was an independent corporation organized and existing under the laws of the State of South Carolina. Home Stores had its principal place of business at Columbia, S. C., and Dixie Stores had its principal place of business at Greenville, S. C., in which latter city Dixie Home Stores now has its similar facilities and respondent has one of its plants.

Each of said corporations maintained its purchasing agent and warehouse at their respective principal places of business, where each purchased and received delivery of approximately \$3,000 worth of commodities from respondent each month from June 19, 1936, to approximately May 1937, which commodities were destined to be and were distributed by each, respectively, to approximately 85

retail grocery stores which each owned and operated. The approximate 85 retail grocery stores of the Home Stores were located in the central and southern sections of South Carolina and in the northeastern section of Georgia, while the approximate 85 retail grocery stores of Dixie Stores were located in the northern and western sections of South Carolina, and the western section of North Carolina. These stores, although now owned and operated by Dixie Home Stores, retain their respective names as Home Stores and as Dixie Stores in the communities where located.

Approximately the same net prices, discounts, and other allowances granted by respondent to Dixie Home Stores, as hereinafter alleged in paragraph 8, and in exhibit A, were granted and allowed by respondent to Dixie Stores and to Home Stores, respectively, prior to consolidation, although respondent sold to Dixie Stores and to Home Stores, respectively, only approximately one-half the dollar quantity of commodities now sold to Dixie Home Stores. The Home Stores and the Dixie Stores through their respective retail stores were, and the Dixie Home Stores through its retail stores were and are, in competition, in the area where each of such stores is located, with other purchasers of respondents commodities who pay higher net prices and receive smaller discounts and other allowances than said Home Stores, Dixie Stores, and Dixie Home Stores.

PAR. 5. Approximately the same net prices, discounts, and other allowances alleged in paragraph 8 and in exhibit A to have been granted and allowed by respondent to Thomas & Howard Co.'s have been, and are being, granted and allowed by respondent to approximately 12 firms and their branches, each of which is engaged in the wholesale grocery business and the names and locations of which are as follows:

1. Thomas & Howard Co. of Columbia, S. C., with branches at Camden, Newberry, and Darlington, S. C.;
2. Thomas & Howard Co. of Greenville, S. C., with a branch at Seneca, S. C.;
3. Thomas & Howard Co. of Charleston, S. C., with a branch at Allendale, S. C.;
4. Thomas & Howard Co. of Chester, S. C.;
5. Thomas & Howard Co. of Spartanburg, S. C.;
6. Thomas & Howard Co. of Sumter, S. C.;

each of which is a corporation organized and existing under the laws of the State of South Carolina;

7. Thomas & Howard Company, Inc., of Charlotte, N. C., with branches at Salisbury, and Rocky Mount, N. C.;

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## 8. Thomas &amp; Howard Company of Hickory, N. C.;

each of which is a corporation organized and existing under the laws of the State of North Carolina;

## 9. Thomas &amp; Howard Co. of Durham, N. C.;

## 10. Thomas &amp; Howard Co. of Greensboro, N. C.;

each of which is organized and does business as a partnership;

## 11. Timberlake Grocery Co. of Thomasville, Ga.;

## 12. Christiansburg Canning Co. of Pulaski, Va.

The Timberlake Grocery Co. was organized and is doing business as a corporation under the laws of the State of Georgia, and The Christiansburg Canning Co. was organized and is doing business under the laws of the State of Virginia; and each of which is referred to, and known by the trade as Thomas & Howard Co.'s, although they do not use the words "Thomas & Howard Co." in the respective names under which they do business.

Each of said firms purchase from approximately \$3,000 worth to approximately \$35,000 worth of commodities from respondent each year, and the aggregate of the purchases of all of said firms is approximately \$300,000 worth per year. Respondent solicits orders from each of said firms and its branches individually, at their respective and geographically separated places of business, from purchasing officers who purchase exclusively for their respective firms; and respondent delivers commodities when purchased to their respective individual warehouses located at their respective places of business.

Each of said firms is a separate, distinct, and independent legal and business entity, doing business with respondent as aforesaid, yet the basis upon which respondent grants the same net prices, discounts, and other allowances to each of said firms and its branches is that respondent considers and treats the purchases of all of them collectively as constituting the purchases of a single purchaser, and grants to each of said firms and its branches the net prices, discounts and other allowances which respondent has determined are applicable to a single purchaser who purchases approximately \$300,000 worth of said commodities a year upon solicitation at and delivery to a single point. Although respondent has no such purchaser buying such a volume under such circumstances, respondent uses a hypothetical purchaser purchasing under such circumstances as a standard in granting said preferences to Thomas & Howard Co.'s and in refusing to grant similar preferences to other and competing purchasers, who, as individual firms, do not and cannot purchase such a volume, under such circumstances, but who do purchase as great a volume of commodities in a year as many of said firms.

When said firms are considered as a single purchaser, they do a volume of business which constitutes a substantial portion of the entire wholesale grocery business in the States where located, and they are so strategically located geographically in those States as to blanket those areas. Each of said Thomas & Howard Co.'s and branches are in competition, in the area where located, with other purchasers from respondent who are similarly engaged in the distribution of grocery commodities and who are charged and who pay higher net prices and receive smaller net discounts and other allowances than said Thomas & Howard Co.'s and branches; and some of the customers of each of said Thomas & Howard Co.'s and branches are in competition, in the areas where such customers are located, with customers of such other distributors. When all of said Thomas & Howard Co.'s and branches are treated as a single purchaser and each is accorded the terms of sale which respondent has determined are applicable to such a hypothetical purchaser, each of said firms and its branches exerts in its competitive area the same power that could be exerted by such hypothetical firm if located in each of such areas.

PAR. 6. Rose-Phillips Co. is a corporation, organized and existing under the laws of the State of South Carolina, having its principal place of business at Greenwood, S. C., and engages in the wholesale grocery business, buying groceries, vegetables, fruits, and other varieties of food and household commodities and selling such commodities to retail grocery stores, some of which are in competition with some of the retail grocery stores of Dixie Home Stores. It serves a large part of the trade area served by Thomas & Howard Co., of Newberry, S. C., and to a limited extent it serves the trade area served by Thomas & Howard Co. of Spartanburg, S. C., and Thomas & Howard Co. of Greenville, S. C. Rose-Phillips Co. was a purchaser of respondent's products on June 19, 1936, and continued to be a purchaser of respondent's products for some time thereafter. Rose-Phillips Co. ceased to purchase commodities from respondent some months after June 19, 1936, when respondent refused to grant and allow to said company the same net prices, discounts and other allowances which respondent granted and allowed to competitors of said company, namely, the Thomas & Howard Co.'s, and to competitors of said company's customers, namely, Home Stores, Dixie Stores, and Dixie Home Stores. The foregoing allegations with respect to Rose-Phillips Co. are equally applicable to many other of respondent's customers and former customers.

PAR. 7. Some of said discriminations in prices are effected through the use by respondent of three price lists. Each of said price lists states the prices at which the respondent instructs its salesmen and

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representatives to quote certain commodities, some of which are on each list. As to some commodities which appear on each list, a different price is stated in each list, one list stating the lowest price, another list stating a higher price, and another list stating the highest price at which such commodities are sold. Such lists are effective concurrently, but each list is used in quoting prices to only certain customers, the customers quoted from each list being mutually exclusive. Respondent furnishes one or more of such lists to some of its salesmen and representatives together with the names of the customers to be quoted therefrom. The majority of respondent's customers are quoted prices from the list containing the highest prices; a smaller number of customers are quoted from the list containing prices lower than those contained in the first; and the smallest number of customers are quoted from the list containing the lowest prices. Respondent secures the enforcement of such policy by threatening to discharge and discharging any salesman who deviates therefrom by quoting a customer from any list other than the one specified by the respondent or who informs a customer of the existence of a list price lower than the list price specified by respondent to be quoted to that customer.

PAR. 8. Specific illustrations of said discriminations are as follows, to wit: Respondent sold miscellaneous spices of like grade and quality to the following purchasers at the following prices; to Dixie Home Stores at a net price of 40 cents per dozen packages; to Milner Stores, which is a retail grocery chain located in various sections of North Carolina, at a net price of 50 cents per dozen packages; to McGee & Bleckley, Anderson, S. C., Rose-Phillips Co. of Greenwood, S. C., and many other wholesale grocers, at a net price of 60 cents per dozen packages. Respondent, therefore, sold such spices to Dixie Home Stores at a price which is 20 percent less than the price to Milner Stores, and more than 33 percent less than the price to McGee & Bleckley, Rose-Phillips Co. and many others; and to Milner Stores at a price approximately 17 percent less than the price at which it sold such spices to McGee & Bleckley and many other purchasers.

Respondent sold Sauer's Salad Dressing of like grade and quality, in pint sizes to the following purchasers at the following prices: to Dixie Home Stores at a net price of \$1.65 per dozen; to Rose-Phillips Co., and many others, at a net price of \$2.01 per dozen. Respondent, therefore, sold such salad dressing to Dixie Home Stores at a price which is approximately 18 percent less than the price to Rose-Phillips Co. and many other purchasers.

Respondent sold No. 5 Vanilla of like grade and quality to the following purchasers at the following prices: to the Thomas & Howard Co.'s at a net price of \$1.45 per dozen; to Augusta Grocery Co., of

Augusta, Ga., Seneca Grocery Co., Rose-Phillips Co., Talmage Bros. & Co., Inc., of Athens, Ga., and many others, all of whom are wholesale grocers, at a net price of \$1.67. Respondent, therefore, sold such extracts to said Thomas & Howard Co.'s at more than 13 percent less than to Augusta Grocery Co., Seneca Grocery Co., Rose-Phillips Co., Talmage Bros. & Co., Inc., and many other purchasers. Further illustration of said discriminations are shown in a comparative table, marked "Exhibit A," attached to and hereby made a part of this complaint. Each of the firms listed in exhibit A are or have been purchasers of respondent. In each specific illustration of respondent's discriminations in prices alleged above, and in exhibit A, the sales to the favored and the unfavored purchasers accruing during an interval of time during which there was no upward or downward movement in the prices of said commodities.

PAR. 9. The effect of the discriminations in prices as hereinbefore set forth may be substantially to lessen competition in the sale and distribution of the said commodities in the respective lines of commerce in which respondent and its customers are engaged, and has been, and may be, to injure, destroy, or prevent competition in the sale and distribution of said commodities with the respondent and with its customers who receive the benefits of such discriminatory prices.

PAR. 10. Such discriminations in prices by respondent between different purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of section 2 (a) of the act described in the preamble hereof.

### *Count 2*

PARAGRAPH 1. Paragraphs 1, 2, 4, 5, and 6 of count 1 are hereby referred to, and by that reference incorporated herein as fully and completely as they would be if set forth herein verbatim.

PAR. 2. While engaged in commerce in the conduct of its business, and in the course of such commerce, as above alleged and described, respondent is now and has been, subsequent to June 19, 1936, engaged in manufacturing, processing, and packaging such commodities for sale, and selling such commodities to customers competitively engaged with each other in the handling, offering for sale, and sale of such commodities to consumers, and to others for resale to consumers; and the respondent contracts to pay and pays to some, but not all, of such customers, and to representatives of some, but not all, of such customers for the benefit of the customers represented, valuable consideration, in the form of credit memoranda, checks, and otherwise, in consideration

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of and as compensation for transportation and advertising services and facilities, contracted to be furnished and furnished by and through such customers directly, and by such customers acting through such representatives in connection with the handling, offering for sale, and sale of said commodities as have been theretofore sold by respondent to them.

PAR. 3. Respondent makes such payments as compensation for advertising services and facilities in connection with the offering for sale, and sale of such commodities on at least two bases, namely:

1. On a basis of a percentage of the net cost of the commodities purchased;

2. On a basis of a definite fixed sum, the amount of which is not calculable by any determinable method.

Such payments are not available on proportionally equal terms to all customers competing in the distribution of such commodities, in that:

1. The same was not available, for example, to the following customers of respondent: J. Drake Edens, Columbia, S. C.; Standard Grocery Co., Greenwood Jitney Jungle, Inc., Miller Stores, all of Greenwood, S. C.; and P. P. Pearson and Williams Piggly Wiggly Store of Gastonia, N. C.

2. With reference to payments calculated on the basis of a percentage of the net cost of the commodities purchased, respondents grant to some of such customers receiving such payments a greater percentage than to others, and to some of such customers such percentage is not available at all. For example, respondent sells Dukes Mayonnaise in pint sizes to Thomas & Howard Cos. and grants them payment of 5 percent and 5 percent; and also to Dixie Home Stores; Lipscomb & Russell Co. of Greenville, S. C.; McGee & Bleckley and Anderson Hardware Co. of Anderson, S. C.; Augusta Grocery Co., of Augusta, Ga.; Talmage Bros. & Co., Inc., of Athens, Ga.; The Great Atlantic & Pacific Tea Co., of Charlotte, N. C., and many others, and grants them payments of only 5 percent.

Respondent sells Sauer's Salad Dressing and miscellaneous spices to Dixie Home Stores, and grants it payments of 5 percent; and also to Lipscomb Russell Co., McGee & Bleckley, Anderson Hardware Co., Augusta Grocery Co., Copeland Grocery Co., of Elberton, Ga., Seneca Grocery Co., of Seneca, S. C., and many others, and grants them no payments on such purchases.

3. With reference to the payments made on a basis of a definite fixed sum, the amount of which is not calculable on any determinable basis; the respondent grants to some of such customers receiving such payments a greater sum than to others, and to some of such customers, such payments are not available at all.

For example, the respondent pays to the following customers directly and through the representatives of such customers for the benefit of the customers represented:

Charlotte, N. C.:

|                                           |                 |
|-------------------------------------------|-----------------|
| Retail Grocers Association.....           | \$40 per month. |
| Independent Food Dealers Association..... | \$25 per month. |

Washington, D. C.:

|                              |                             |
|------------------------------|-----------------------------|
| Nation-Wide Stores.....      | 5 percent on net purchases. |
| District Grocery Stores..... | \$40 per month.             |

Richmond, Va.:

|                           |                             |
|---------------------------|-----------------------------|
| Monogram Food Stores..... | 5 percent on net purchases. |
| Richmond Food Stores..... | Do.                         |
| Sunny South Stores.....   | \$380 per year.             |

The payments made to customers directly or to the representatives of such customers for their benefit on a percentage basis as illustrated above are set out for the purpose of comparison.

Further illustrations as to the amounts of such payment made to competing customers of respondent as compensation for advertising services and facilities are set out in exhibit A.

PAR. 4. Respondent pays compensation to some of such customers for transportation services and facilities in connection with the handling of such commodities by making deductions from invoice prices on the face of the invoice, and such deductions are made under the following circumstances.

As a general practice and policy, the prices which respondent quotes and which appear on its invoices include the cost of transportation by common carrier to customers, and a common carrier is usually employed which receives its lawful charges from respondent or from the customer. When a customer pays the transportation charges to the common carrier, such charges are deducted from the invoice prices at the time the customer makes remittance to respondent.

Some of respondent's customers use trucks to deliver merchandise from their respective places of business to purchasers who are located in the neighborhood of Greenville, S. C., and Richmond, Va., in which cities respondent's plants are situated. Sometimes respondent's customers have trucks in those cities for the purpose of receiving goods from suppliers and transporting them to their respective places of business, and such goods do not require the total capacity of such trucks.

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## EXHIBIT "A"

*Approximate net delivered prices to preferred and nonpreferred customers after deduction of (I) trade discounts and (II) advertising allowances*

[Column I below is the net price after deducting the trade discounts. Column II below is the net price after deduction of trade discounts and advertising allowances]

| Product                        | Customer classification |        |               |        |                     |        |                 |        |                     |        |
|--------------------------------|-------------------------|--------|---------------|--------|---------------------|--------|-----------------|--------|---------------------|--------|
|                                | Retailers               |        |               |        |                     |        | Wholesalers     |        |                     |        |
|                                | Dixie-Home Stores       |        | Milner Stores |        | Others <sup>1</sup> |        | Thomas & Howard |        | Others <sup>2</sup> |        |
| Column No. ....                | I                       | II     | I             | II     | I                   | II     | I               | II     | I                   | II     |
| <b>Sauer's Salad Dressing:</b> |                         |        |               |        |                     |        |                 |        |                     |        |
| Quarts.....                    | \$2.70                  | \$2.57 |               |        | \$3.25              | \$3.25 | \$3.25          | \$3.25 | \$3.25              | \$3.25 |
| Pints.....                     | 1.65                    | 1.57   |               |        | 2.01                | 2.01   | 2.01            | 2.01   | 2.01                | 2.01   |
| <b>Duke's Mayonnaise:</b>      |                         |        |               |        |                     |        |                 |        |                     |        |
| 3-ounce.....                   | .73                     | .69    |               |        | .73                 | .73    | .73             | .67    | .73                 | .73    |
| 4-ounce.....                   | .77                     | .73    | \$0.77        | \$0.77 | .77                 | .77    | .77             | .71    | .77                 | .77    |
| 8-ounce.....                   | 1.33                    | 1.26   | 1.33          | 1.33   | 1.33                | 1.33   | 1.33            | 1.23   | 1.33                | 1.26   |
| Pints.....                     | 2.61                    | 2.48   | 2.61          | 2.61   | 2.61                | 2.61   | 2.57            | 2.32   | 2.61                | 2.48   |
| Quarts.....                    | 4.40                    | 4.18   | 4.40          | 4.40   | 4.40                | 4.40   | 4.40            | 4.08   | 4.40                | 4.18   |
| <b>Pure extracts:</b>          |                         |        |               |        |                     |        |                 |        |                     |        |
| No. 2 Vanilla.....             | .77                     | .73    |               |        | .77                 | .77    | .77             | .77    | .77                 | .77    |
| No. 2 Lemon.....               | .77                     | .73    |               |        | .77                 | .77    | .77             | .77    | .77                 | .77    |
| No. 5 Vanilla.....             | 1.67                    | 1.59   |               |        | 1.67                | 1.67   | 1.45            | 1.38   | 1.67                | 1.67   |
| No. 5 Lemon.....               | 1.67                    | 1.59   |               |        | 1.67                | 1.67   | 1.67            | 1.59   | 1.67                | 1.67   |
| <b>Miscellaneous spices:</b>   |                         |        |               |        |                     |        |                 |        |                     |        |
| Ground ginger.....             | .40                     | .38    | .50           | .50    | .60                 | .60    | .60             | .57    | .60                 | .60    |
| Ground mustard.....            | .40                     | .38    | .50           | .50    | .60                 | .60    | .60             | .57    | .60                 | .60    |
| Ground red pepper.....         | .40                     | .38    | .50           | .50    | .60                 | .60    | .60             | .57    | .60                 | .60    |
| Ground tumeric.....            | .40                     | .38    | .50           | .50    | .60                 | .60    | .60             | .57    | .60                 | .60    |
| Curry powder.....              | .40                     | .38    | .50           | .50    | .60                 | .60    | .60             | .57    | .60                 | .60    |
| Cream of tartar.....           | .40                     | .38    | .50           | .50    | .60                 | .60    | .60             | .57    | .60                 | .60    |
| Celery seed.....               | .60                     | .57    | .63           | .63    | .68                 | .68    | .68             | .65    | .68                 | .68    |
| Celery salt.....               | .60                     | .57    | .63           | .63    | .68                 | .68    | .68             | .65    | .68                 | .68    |
| <b>Miscellaneous products:</b> |                         |        |               |        |                     |        |                 |        |                     |        |
| No. 2 Carter oil.....          | 4.15                    | gr. 0  |               |        |                     |        | 4.75            | 0      |                     |        |
| No. 2 Turpentine.....          | 3.50                    | gr. 0  |               |        |                     |        | 4.25            | 0      |                     |        |

<sup>1</sup> Other retailers are J. Drake Edens, P. P. Pearson, Miller Stores, Williams Piggly Wiggly, Greenwood Jitney Jungle, and many others.

<sup>2</sup> Other wholesalers are Rose Phillips Co., McGee & Bleckley, Talmage Bros. & Co., Inc., Seneca Grocery Co., Carter Grocery Co., Augusta Grocery Co., Copeland Grocery Co., and many others.

In order to aid some of such customers to utilize or to more fully utilize such trucks on their return trip, respondent has delivered to such customers at the door of its plants, since June 19, 1936, commodities purchased by them for transportation by such customers to their respective places of business; and in consideration of and compensation for such handling of such commodities, respondent, as above alleged, deducts from the invoice prices a sum equal to the common carrier charges for such transportation.

Under such circumstances, the cost of such handling to such purchasers, who transport their own purchases, was and is substantially less than the tariff charges by common carrier for the same services and facilities; and the savings thus effected result in a lower per unit cost for such commodities to such customers than the cost to customers to whom purchases are transported by common carrier. Other such cus-

tomers similarly situated have requested respondent to so handle such commodities as they have purchased from respondent, and to receive such payments as compensation therefor, but respondent has denied such request, and their purchases are transported to them by common carrier.

In that such payments for transportation services and facilities have been and are granted to some such customers and denied to others, such payments are not available on proportionately equal terms to all customers competing in the distribution of such commodities.

PAR. 5. Such acts of respondent since June 19, 1936, in interstate commerce, in the manner and form aforesaid, in paying and contracting to pay valuable consideration to and for the benefit of some customers for services and facilities furnished by and through such customers, in connection with the handling, sale, and offering for sale of commodities theretofore sold to them by respondent without such payments being available on proportionately equal terms to all other competing customers is in violation of the provisions of section 2 (d) of the Robinson-Patman Act, further described in the preamble hereof.

#### REPORTS, 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, U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission duly issued and served its complaint upon the respondent, The C. F. Sauer Co., charging it with violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the respondent had answered, hearings were held and evidence introduced on behalf of the Federal Trade Commission. Thereafter the Federal Trade Commission duly issued and served on the respondent its amended complaint in this proceeding charging violations of the provisions of subsections (a) and (d) of section 2 of the said Clayton Act as amended by the Robinson-Patman Act. The respondent in due course filed its answer to such amended complaint, admitting certain allegations and denying other allegations of said amended complaint.

After the issuance of said amended complaint and the filing of respondent's answer thereto and without the taking of any testimony pursuant thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel for the Commission, and Simon Michelet,

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the duly authorized attorney for The C. F. Sauer Co. In the said stipulation as to the facts counsel for the respondent waived the taking of further evidence, the filing of the trial examiner's report, and all other intervening procedure, and expressly waived the filing of briefs and oral argument.

Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended complaint, the answer thereto, and the stipulation as to the facts, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter 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. The respondent, The C. F. Sauer Co., is a corporation organized and existing under the laws of the State of Virginia with its principal office and place of business located at 2000 West Broad Street, in the city of Richmond, State of Virginia. The C. F. Sauer Co. operates plants at Richmond, Va., and Greenville, S. C. Mayonnaise and salad dressing are manufactured at respondent's plant located at Greenville, S. C., and are sold and distributed from said plant and from respondent's plant at Richmond, Va.; extracts, spices, tea, pepper, drugs, insecticides, and other commodities are manufactured, packaged, or compounded and are sold and distributed from the respondent's plants located at Richmond, Va.

The respondent has sold its food products to three general groups of customers; namely, wholesale grocers, retail chain grocers, and retail grocers.

PAR. 2. Since June 19, 1936, in the course and conduct of its business, the respondent has sold the aforesaid food products, manufactured, packed, and compounded in the aforesaid plants, to purchasers located in States other than the States in which said plants are located; and such food products so sold were shipped and caused to be transported by respondent from said plants across State lines to such purchasers.

PAR. 3. Since June 19, 1936, while engaged in commerce as aforesaid, the respondent has sold such food products of like grade and quality, for use, consumption, and resale, within the United States to some purchasers at higher prices than the prices charged to competing purchasers.

Illustrations of such sales at different prices are as follows:

1. During April of 1937 or May and June of 1938, respondent sold and shipped its Sauer's Salad Dressing to Dixie Home Stores, retail

grocers who do business in North Carolina, South Carolina and Georgia, at a net price of \$2.70 per dozen quarts and \$1.65 per dozen pints, and respondent concurrently sold and shipped said salad dressing to a number of other and competing purchasers among whom was the Mutual Distributing Co., of Asheville, N. C., also a retail grocer, at an invoice price of \$3.80 per dozen quarts and \$2.35 per dozen pints, from which invoice prices the respondent granted and allowed discounts of 10 percent and 5 percent, making net prices to the said purchaser of \$3.25 per dozen for quarts and \$2.01 per dozen for pints.

2. During April of 1937 or May and June of 1938, respondent sold and shipped its Sauer's Salad Dressing to said Dixie Home Stores, retail grocers, doing business in North Carolina, South Carolina, and Georgia, at a net price of \$2.70 per dozen quarts and \$1.63 per dozen pints, and respondent concurrently sold and shipped said salad dressing to Rose-Phillips Co., Greenwood, S. C., Seneca Grocery Co., Seneca, S. C., and McGee & Bleckley, Anderson, S. C., all of whom are wholesale grocers, whose customers compete with said Dixie Home Stores, at invoice prices of \$3.80 per dozen quarts and \$2.35 per dozen pints, from which invoice prices the respondent granted and allowed discounts of 10 percent and 5 percent to the wholesale grocers named, making net prices to the said purchasers of \$3.25 per dozen for quarts and \$2.01 per dozen for pints.

3. During March or August and September of 1937, respondent sold and shipped its miscellaneous packaged spices to Dixie Home Stores, retail grocers doing business in North Carolina, South Carolina, and Georgia, at an invoice price of 40 cents per dozen 10-cent-size packages, and respondent concurrently sold and shipped, during the same month, said spices to a large number of other and competing retail purchasers, among whom was Horn's Cash Store of Forest City, N. C., Mutual Distributing Co. of Asheville, N. C., and K. E. Simpson of Rutherfordton, N. C., at an invoice price of 70 cents per dozen 10-cent-size packages, from which price respondent granted and allowed a discount of 10 percent and 5 percent, making a net price of 60 cents per dozen packages.

Sales of such food products by respondent to some purchasers at higher prices than to other competing purchasers were not limited to the food products, the purchasers, or to the dates set forth in the above illustrations; but since June 19, 1936, in each trade area served, respondent sold some of such food products to one or a few purchasers at higher prices than the same food products were concurrently sold to other and competing purchasers, and the extent of the differentials between such prices varied from differentials of approximately 5

percent to differentials of approximately 25 percent, depending upon the food products sold and the purchaser, or either.

For example: The respondent sold some of its food products in the same trade area, to retail chain grocers and to wholesale grocers. Respondent's net price on some such food products was lower to the retail chain grocer than to the wholesale grocer, to such an extent that the retail chain grocer could and did sell such food products at retail at a price lower than such wholesale grocer could purchase such food products of like grade and quality from respondent.

PAR. 4. The differentials between the prices charged for some such food products by respondent to such competing purchasers was sufficient to permit the purchasers charged the lower prices to resell, and such purchasers did so resell, such food products at prices only slightly higher than, as low as, or lower than the prices at which competing resellers were able to purchase such food products from respondent. Purchasers paying the higher prices for such food products were unable to resell them except at a loss, at no profit, or at a profit insufficient, those commodities alone considered, to warrant continued or anything but passive resale effort. The Commission concludes that price differences such as those herein described are, in the circumstances of this case, material in that the effect thereof upon competition among purchasers and with favored purchasers was, and may be, to injure, prevent, or destroy such competition.

PAR. 5. In consideration of and as compensation for advertising services and facilities contracted to be furnished or furnished by some customers in connection with the handling, offering for sale, and sale of such food products, respondent contracted to pay, and paid, various sums, or in lieu thereof contracted to issue, and issued, credit memoranda in amounts equal to that percentage of the net prices charged by respondent for such food products which is set forth opposite the customers' names in the column entitled "Amount of Credit Memorandum"; and where no such percentage figure is shown, no such credit memoranda were issued by respondent in any amount to such customers, although such customers were competitive with the compensated customers and were ready, willing, and able, and in some instances offered, to furnish such services and facilities, which said offers were refused by respondent.

The following tabulation shows the amount of the credit memoranda granted some customers on purchases of some food products, such allowance being based on a percentage of the net purchase price of such food products, in comparison to a smaller allowance or no allowance granted to competitors of such purchasers who also purchased such food products during the same specified time.

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## Findings

## FOOD PRODUCT

*Sauer's salad dressing*

[Sold by respondent during April, May, and August, 1938]

| Names and addresses of customers                                | Amount of credit memorandum | Size    |
|-----------------------------------------------------------------|-----------------------------|---------|
| <i>Retailers</i>                                                |                             |         |
| Dixie Home Stores, North Carolina, South Carolina, and Georgia. | { 5 percent.....            | Pints.  |
|                                                                 | { ...do.....                | Quarts. |
| Mutual Distributing Co., Asheville, N. C.....                   | { 0 percent.....            | Pints.  |
|                                                                 | { ...do.....                | Quarts. |

*Duke's mayonnaise*

[Sold by respondent during March, April, and May, 1937]

| Names and addresses of customers                                | Amount of credit memorandum  | Size     |
|-----------------------------------------------------------------|------------------------------|----------|
| <i>Retailers</i>                                                |                              |          |
| Dixie Home Stores, North Carolina, South Carolina, and Georgia. | { 5 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
|                                                                 | { ...do.....                 | Quarts.  |
| The Great A & P Tea Co., Charlotte, N. C.....                   | { 0 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
|                                                                 | { ...do.....                 | Quarts.  |
| <i>Wholesalers</i>                                              |                              |          |
| Thomas & Howard Co., Inc., Charlotte, N. C.....                 | { 5 percent + 5 percent..... | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
|                                                                 | { ...do.....                 | Quarts.  |
| Charles Moody Co., Charlotte, N. C.....                         | { 5 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
|                                                                 | { 0 percent.....             | Quarts.  |
| F. M. Youngblood & Co., Concord, N. C.....                      | { 5 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
|                                                                 | { 0 percent.....             | Quarts.  |
| <i>Wholesalers</i>                                              |                              |          |
| Malone & Hyde, Inc., Memphis, Tenn.....                         | { 5 percent + 5 percent..... | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
| Clayton-Hughes Co., Covington, Tenn.....                        | { 5 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |

*Duke's relish*

[Sold by respondent during March, April, and May, 1937]

| Names and addresses of customers                                | Amount of credit memorandum  | Size     |
|-----------------------------------------------------------------|------------------------------|----------|
| <i>Retailers</i>                                                |                              |          |
| Dixie Home Stores, North Carolina, South Carolina, and Georgia. | { 5 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
| Horn's Cash Store, Forest City, N. C.....                       | { 0 percent.....             | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
| <i>Wholesalers</i>                                              |                              |          |
| Thomas & Howard Co., Inc., Charlotte, N. C.....                 | { 5 percent + 5 percent..... | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
| F. M. Youngblood & Co., Concord, N. C.....                      | { 0 percent.....             | 8-ounce. |
|                                                                 | { 5 percent.....             | Pints.   |
| Thomas & Howard Co., Greensboro, N. C.....                      | { 5 percent + 5 percent..... | 8-ounce. |
|                                                                 | { ...do.....                 | Pints.   |
| Carolina Commission Co., Hickory, N. C.....                     | { 5 percent.....             | 8-ounce. |
|                                                                 | { 0 percent.....             | Pints.   |

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## FOOD PRODUCT

*Sauer's tea*

[Sold by respondent during March 1937]

| Names and addresses of customers           | Amount of credit memorandum | Size     |
|--------------------------------------------|-----------------------------|----------|
| <i>Wholesalers</i>                         |                             |          |
| Thomas & Howard Co., Greensboro, N. C..... | 10 percent.....             | 4-ounce. |
| F. M. Youngblood & Co., Concord, N. C..... | 0 percent.....              | Do.      |
| Central Grocery Co., Burlington, N. C..... | do.....                     | Do.      |

*Sauer's pure extracts*

[Sold by respondent during January, May, and June 1938]

| Names and addresses of customers                          | Amount of credit memorandum | Size            |
|-----------------------------------------------------------|-----------------------------|-----------------|
| <i>Wholesalers</i>                                        |                             |                 |
| Evans-Terry Co., Inc., Mississippi and Tennessee.....     | {10 percent.....            | No. 5 Vanilla.  |
|                                                           | {do.....                    | No. 10 Vanilla. |
| Malone & Hyde, Inc., Tennessee, Mississippi, and Arkansas | {5 percent.....             | No. 5 Vanilla.  |
|                                                           | {do.....                    | No. 10 Vanilla. |

*Miscellaneous packaged spices*

[Sold by respondent during May, June, and August 1938]

| Names and addresses of customers                      | Amount of credit memorandum | Size      |
|-------------------------------------------------------|-----------------------------|-----------|
| <i>Wholesalers</i>                                    |                             |           |
| Evans-Terry Co., Inc., Mississippi and Tennessee..... | 10 percent.....             | 10 cents. |
| Malone & Hyde, Inc., Tennessee and Mississippi.....   | 5 percent.....              | Do.       |

## CONCLUSION

The aforesaid discriminations in price and the aforesaid payments and allowances by the respondent, as herein found, are in violation of subsections (a) and (d) of section 2 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, U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent thereto, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion

based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of subsection (a) and subsection (d) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act, U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

*It is ordered,* That respondent The C. F. Sauer Co., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in the sale of mayonnaise, salad dressing, extracts, spices, tea, pepper, insecticides, or other of its products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist:

1. From discriminating, directly or indirectly, in the price of any such products of like grade and quality by selling any such product or products to any purchaser at a price or prices materially different from those at which sales are made to any other purchaser where those buying at such different prices compete in the resale of such product or products, or where the effect is, or may be, to injure, destroy, or prevent competition with any favored purchaser or his customers.

2. From otherwise discriminating in price, either directly or indirectly, among different purchasers of any such product or products of like grade and quality in any manner prohibited by section 2 (a) of the said Clayton Act as amended.

*It is further ordered,* That said respondent, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of any of respondent's aforesaid products in commerce, as "commerce" is defined in the said Clayton Act, do forthwith cease and desist from paying, or contracting to pay, or granting or allowing, anything of value to or for the benefit of any customer as compensation or in consideration for any advertising, promotive, or other services or facilities furnished by, or through, such customer in connection with the processing, handling, sale, or offering for sale of any such product or products, unless such payments or allowances are available on proportionally equal terms to all other customers competing in the distribution of such products.

*It is further ordered,* That the respondent 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

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IN THE MATTER OF  
GIANT TIGER CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (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 4276. Complaint, Aug. 28, 1940—Decision, July 31, 1941*

Where a corporation engaged in operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS," purchasing a substantial portion of its requirements from sellers in other States—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts, through purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers to their respective brokers for effecting sales thereof to other purchasers:

*Held*, That such receipts and acceptance of allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

*Mr. John T. Haslett* for the Commission.

*Einhorn & Schachtel*, of Philadelphia, Pa., 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 subsection (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), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Giant Tiger Corporation is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at Forty-first and Chestnut Streets, Philadelphia, Pa. Respondent is engaged in the business of operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS."

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.