

IN THE MATTER OF
FEDERAL 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 3926. Complaint, Oct. 13, 1939—Decision, Sept. 22, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of bakers' yeast, in substantial competition with others similarly engaged—

- (a) Discriminated in price by selling yeast of like grade and quality and in like quantities to customers competitively engaged with one another in sale and distribution of bread and allied products, at differentials amounting to 7 percent and upwards, thereby affording to the beneficiaries substantial savings in price which constituted material and vital factors in competition;
- (b) Discriminated in price by delivering large quantities of its yeast without charge to certain purchasers in addition to its yeast actually sold to them, thereby substantially reducing average cost of its yeast to said purchasers, while concurrently selling it to others without so delivering yeast for which no charge was made, so that while both classes might be charged the same price for yeast sold and billed, the actual cost to the former was less by 5 percent or more than that to the nonfavored customers, thereby affording substantial savings to the beneficiaries which constituted material and vital factors in competition; and
- (c) Discriminated in price by granting to certain of its purchasers cash discounts of 1 to 2 percent not granted to others who paid in the same manner and within the same time;

Effect of which discriminations had been and might be substantially to lessen competition in the line of commerce concerned, and 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 said discriminations in price, as hereinabove set out, violated subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Mr. Simon E. Sobeloff, of Baltimore, Md., for respondent.

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 section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19,

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1936 (U. S. C. title 15, sec. 13,) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Federal Yeast Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, having its principal office and plant located at Colgate-Highlandtown P. O., Baltimore, Md.

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 Maryland 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, individuals, partnerships, and firms 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 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 5,681 pounds of bakers' yeast to Benkert's Bakery, 3012 Thirtieth Avenue, Long Island City, N. Y., at 13 cents per pound and during the same period sold Sabriett Food Products Co., 90 East Third Street, New York City, N. Y., a competitor, 10,910 pounds of bakers' yeast at 11 cents per pound and 27,710 pounds of bakers' yeast at 10 cents per pound, thus affording the last mentioned purchaser a saving of \$1,049.50 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 product 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 of said favored cus-

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tomers 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 December 1936, Kallik, 1018 Intervale Avenue, New York City, N. Y., purchased 1,171 pounds of bakers' yeast at 13 cents per pound and in addition to said purchased yeast respondent delivered 115 pounds of bakers' yeast for which no charge was made, while during the same period Your Baking, 1141 Burnett Place, New York City, N. Y., a competitor purchased 915 pounds of baker's 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 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 discriminations 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton 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 13th day of October 1939, issued and subsequently served its complaint in this proceeding upon respondent Federal Yeast Corporation, charging the respondent 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 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 of fact set forth in said complaint, with the exception of the illustra-

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tions 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. Thereafter, 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 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, has 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. The respondent, Federal Yeast Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal office and place of business at Colgate-Highlandtown P. O., Baltimore, Md.

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 Maryland 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 Maryland 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 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 non-favored customers.

PAR. 6. Respondent's acts and practices as set forth in paragraphs 4 and 5 constituted discriminations in price between its customers, and the savings to the beneficiaries of such discriminations in price 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 purchasers by granting cash discounts of 1 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.

CONCLUSION

The discriminations in price by respondent as hereinabove set out, violate subsection (a) 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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the substitute answer

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of the respondent, in which answer respondent admits all the material allegations of said complaint with the exception of the illustration 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 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), 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, Federal 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 7 of the findings of fact or 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, Federal 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 ' hereinbefore set forth.

IN THE MATTER OF
**LEONA JOHNSON AND AUBREY M. GRAFF, TRADING AS
RADIO DISTRIBUTORS**

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

Docket 4157. Complaint, June 7, 1940—Decision, Sept. 22, 1941

Where an individual engaged in the competitive interstate sale and distribution of radios and other articles; in soliciting sale of and in selling and distributing her said products—

Furnished various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes in sales of her merchandise to the ultimate consumer, including among other things, push cards and circulars explaining her plan of selling her said merchandise and allotting it as premiums or prizes to operators of said cards and to the purchasing public, a typical plan involving the use of a push card displaying 58 feminine names and adjacent disks and under which the customer selecting the name corresponding to that under card's master seal received a radio, those punching disks concealing certain numbers received a combination pen and pencil, and the amount paid for a chance was dependent upon the number punched; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of her merchandise, in which the fact as to whether a purchaser received an article and which, if any, was determined wholly by lot and there was involved a game of chance to procure an article at much below its normal price, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who are unwilling to use any method involving chance, or contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by her said sales plan and the element of chance involved therein, and were thereby induced to buy and sell her merchandise in preference to that of said competitors, and trade in commerce was unfairly diverted to her from them, to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. D. C. Daniel* for the Commission.

Mr. A. H. Schwab of Nash & Donnelly, of Chicago, Ill., for respondents.

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