

IN THE MATTER OF
LIFE SAVERS CORPORATION

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 4571. Complaint, Aug. 18, 1941—Decision, Dec. 23, 1941

Where a corporation engaged in the manufacture of its "Life Savers" confection, and in the competitive interstate sale and distribution thereof to corporate and cooperative chain stores, individual retail stores, and department stores, who were in substantial competition in the resale of said products, it selling its merchandise of like grade and quality at a uniform price per box, less 20 percent—

- (a) Granted and paid, generally at the end of each quarter of a year, to some corporate retail food, drug, and variety chains, to whom, in some instances, delivery was made at each individual store, and in others to said chains' central warehouses, a sum equal to 10 percent of the net dollar volume of purchases made at its aforesaid invoice price, while refusing such 10 percent payment to other chain stores, department stores, single unit retail stores, and jobbers competitively engaged with such favored purchasers;

With result of lessening competition in the line of commerce concerned, of inducing purchasers receiving such payment, in many instances, to discontinue dealing in competitors' products and, in other instances, of substantially decreasing their purchases thereof, and of injuring competition with such customers of said corporation who knowingly received aforesaid discount:

Held, That in granting and paying discount, as aforesaid, corporation violated the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said corporation, engaged as aforesaid—

- (b) Paid and contracted to pay sums of money equal to 10 percent of the net invoice amount of purchases to numerous corporate chain store customers in consideration of their entering into and fulfilling an agreement whereby some of them collected orders from their individual retail stores and transmitted the same to it, while other retail units sent in such orders direct, and shipped its said products to the central warehouse or the individual stores of said chain-store customers, who, additionally and pursuant to agreement in question, provided displays of said confection by each retail store in a manner acceptable to it; while failing to make such payments as compensation for like services and facilities available to other customers, competitively engaged in the distribution of said "Life Savers," including any customer who had received from it any other 10 percent allowance:

Held, That in practice aforesaid, corporation in question violated the provisions of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. James A. Purcell*, trial examiner.

Mr. A. W. DeBirny for the Commission.

Mr. Jerome L. Isaacs of Rogers, Hoge & Hills, of New York City, 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 subsections (a) and (d) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

Count 1

PARAGRAPH 1. Respondent, Life Savers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at Port Chester, N. Y.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged in the business of manufacturing and selling a candy confection known as "Life Savers" for resale within the various States of the United States, the Territories thereof, and in the District of Columbia. In the course and conduct of its said business respondent sells the aforesaid product to purchasers located in the various States of the United States and causes said products when sold to be shipped and transported from its place of business in the State of New York across State lines to the respective purchasers thereof located in each of the several States of the United States, the Territories thereof, and in the District of Columbia. There is, and has been at all times mentioned herein, a constant current of trade in said product between respondent located in the State of New York and various purchasers located as aforesaid.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is now engaged in substantial competition in commerce with other manufacturers of candy confections, especially with the Beech-Nut Packing Co., which, for many years prior hereto, has been and is now engaged in selling and shipping such confections in commerce across State lines to purchasers thereof located in the various States of the United States and in the District of Columbia.

Respondent in the course and conduct of its business and since June 19, 1936, has sold its merchandise of like grade and quality to various purchasers among which are multiple retail outlets, department stores, single retail outlets and wholesalers. All such customers are invoiced Life Savers at a price of 65 cents a box less a discount of 20 percent, the cost of such goods to such customers being 52 cents, which is the same price as that at which respondent's principal competitor, the

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Beech-Nut Packing Co., invoices its competitive product to such class of customers. Such multiple retail outlets, single retail outlets, department stores and the customers of such wholesalers are all competitively engaged with one another in the resale of such products.

PAR. 4. In the course and conduct of its said business, the respondent since February 1938, has, in addition to the customary 20 percent discount, granted and paid secretly to some multiple retail outlet customers a quarterly rebate of 10 percent of the dollar volume of such customers' purchases. The respondent thereby has discriminated in price in favor of such multiple retail outlet customers and against competing single retail outlets, department stores and wholesalers. To other customers competitively engaged with such favored customers, the respondent has not paid or offered to pay and has refused any such rebate.

PAR. 5. The effect of the discrimination in price alleged in paragraph 4 has been and may be substantially to lessen competition in the line of commerce in which respondent is engaged and to injure competition with respondent and with such customers of respondent who knowingly receive the benefit of such discrimination.

Such discrimination in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form aforesaid is in violation of the provisions of subsection (a) of section 2 of the Act described in the preamble hereof.

Count 2

PARAGRAPH 1. Paragraphs 1 and 2 of count 1 are hereby adopted and made a part of this count as fully as if herein set out verbatim.

PAR. 2. In the course and conduct of its business in commerce, respondent since February 1938, has secretly paid and contracted to pay to approximately 150 customers an amount calculated at 10 percent of the dollar volume of such customers' purchases as compensation and in consideration for services and facilities furnished by such customers in connection with the sale and offering for sale of Life Savers while refusing to make such payment available on proportionally equal terms to all competing customers, or on any terms to some of its 4,500 customers, competing in the distribution of such Life Savers. Such payment is for servicing retail stores covering the display and distribution of Life Savers and is not in addition to the price discrimination referred to in count 1 hereof.

PAR. 3. It has been the policy of Life Savers Corporation as set forth in instructions from the vice president in charge of sales, to conceal from all except the favored customers the details of the agree-

ments relating to compensation of customers for services connected with display facilities. District managers have been instructed by the sales department that their division managers should deny to customers any knowledge of such allowances and under no circumstances to tell a customer to write to the respondent as that "more or less puts us on the spot."

PAR. 4. The respondent has endeavored to prevent the spread of the allowances to small customers even though such operators would give exclusive display. District managers of respondent have refused small retail drug chains an opportunity to earn this display service allowance.

PAR. 5. Respondent in some instances grants compensation for services covering the prominent display and distribution of Life Savers to the extent of eight flavors, in other instances requiring that thirteen or some other number of flavors be so serviced and displayed. Such display service compensation agreements frequently, but not always, contemplate that such customer will no longer display any flavor of Beech-Nut mints or fruit drops.

PAR. 6. The above-described acts and practices of respondents are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, the Clayton 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 August 18, 1941, issued and thereafter served its complaint in this proceeding upon respondent, Life Savers Corporation, a corporation, charging it with the violation of the provisions of subsections (a) and (d) of section 2 of said act.

After issuance of the complaint and the filing of respondent's answer thereto, a hearing was held before James A. Purcell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, at which a stipulation was entered into between A. W. DeBirny, attorney for the Commission, and Jerome L. Isaacs, attorney for the respondent, and made a part of the record. By this stipulation, respondent admitted all the material allegations of the complaint and waived further hearings, the filing of briefs, oral argument and all intervening procedure.

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Thereafter this proceeding regularly came on for final disposition by the Commission on the complaint, the answer thereto, the stipulation and the trial examiner's report: 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. Respondent, Life Savers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Port Chester, N. Y.

PAR. 2. Respondent is now, and since June 19, 1936, has been, engaged in the business of manufacturing and selling a candy confection known as "Life Savers," for resale within the various States of the United States, the Territories thereof, and in the District of Columbia. In the course and conduct of its said business, respondent sells the aforesaid product to purchasers located in the various States of the United States, and causes said product, when sold, to be shipped and transported from its place of business in the State of New York, across State lines, to the respective purchasers thereof located in each of the several States of the United States, the Territories thereof and the District of Columbia. There is, and has been at all times mentioned herein, a constant current of trade in said product between respondent, located in the State of New York, and various purchasers located as aforesaid.

PAR. 3. Life Savers Corporation is in substantial competition in commerce with Beech-Nut Packing Co. and at least one other company, each of which manufactures a candy confection similar to Life Savers, and sells and distributes the same to customers located throughout the United States.

PAR. 4. Corporate chain store customers, voluntary and cooperative chain store customers, individual retail store customers, department-store customers and such retail-store purchasers who are customers of respondent's jobbers are generally in substantial competition in the resale of products purchased from respondent or from a customer of respondent.

PAR. 5. Respondent in the course and conduct of its business since February 1938, has sold its merchandise of like grade and quality to various purchasers. All Life Savers are invoiced at a price of 65 cents a box less 20 percent, the invoice price of such goods to such customers being 52 cents. In connection therewith, respondent has granted and

paid to some corporate retail food, drug and variety chains, generally at the end of each quarter of a year, a sum equal to 10 percent of the net dollar volume of purchases made at the aforesaid invoice price. In some instances, such chain stores received delivery at each individual store while in other instances delivery was made to such chains' central warehouses. Other chain store customers competitive in commerce with the chains receiving the 10 percent were not granted or paid said 10 percent. Likewise, purchasers either competitively engaged themselves or whose customers were competitively engaged with the favored purchasers, such as department stores, single unit retail stores, and jobbers, were not paid said 10 percent.

PAR. 6. The effect of the granting and paying of the 10 percent heretofore referred to or any percentage discount is to lessen competition in the line of commerce in which Life Savers Corporation, Beech-Nut Packing Co., and at least one other company are engaged and to induce the purchasers receiving such payment in many instances to discontinue the purchase and sale of products manufactured by such competitors and in other instances substantially to decrease their purchases of such competitors' products.

PAR. 7. The effect of the granting and paying of the 10 percent discount heretofore referred to is to injure competition with such customers of respondent who knowingly receive the benefit of such discount.

PAR. 8. Respondent since February 1933, and at present has contracted and is contracting to pay and has paid and is paying to numerous corporate chain store customers sums of money equal to 10 percent of the net invoice amount of purchases, in consideration of such customers entering into and fulfilling an agreement whereby some of such customers collect orders from their individual retail stores and transmit the same to respondent while other retail store units send such orders in direct. Respondent thereafter ships its products to the central warehouse of the chain customer or to the individual retail stores owned by the chain; additionally, and pursuant to the said agreement, such customers provide displays of Life Savers by each of such retail stores in a manner acceptable to the respondent. At all times while respondent was making such payments available to the aforesaid customers, other customers competitively engaged with such customers in the distribution of Life Savers have not had and do not have such payments made available to them as compensation or in consideration for like services and facilities which they have furnished or are willing and able to furnish. Such payments were not available to any customer who received from respondent any other 10 percent allowance.

CONCLUSION

The Commission concludes that the respondent Life Savers Corporation has violated the provisions of subsections (a) and (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answer of respondent; the stipulation entered into on the record between the attorney for the Commission and the attorney for respondent, in which respondent admits all the material allegations of the complaint and waives further hearings; the filing of briefs, oral argument, and all intervening procedure; and the report of the trial examiner: And the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of section 2 (a) and (d) 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, Life Savers 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 its candy confection known as "Life Savers," in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling goods of like grade and quality to some purchasers at a price which is 10 percent different than to other purchasers, and from selling goods of like grade and quality to some purchasers at any different price than to other purchasers unless such difference makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.
2. Paying 10 percent or any other percentage of the net dollar volume of purchases to some mass or multiple retail outlet distributors in consideration of their furnishing services or facilities connected with the sale and offering for sale of goods purchased from respondent, such as accepting delivery at a central warehouse and distributing to more than one individual retail store, while not making such payment available on proportionally equal terms to other competing mass or multiple retail outlet distributors who accept delivery at a central warehouse and distribute to individual retail stores or while not making such payment available on proportionally equal terms to jobbers competing in the distribution of such products who in fact

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take delivery at their central warehouse and distribute to individual retail stores.

3. Compensating or paying 10 percent or any other percentage of the net dollar volume of purchase to any customer for services furnished by or through such customer while not making such compensation or payment in consideration of like services furnished by or through other customers available on proportionally equal terms to such customers competitively engaged in the distribution of such products.

It is further ordered, That the respondent Life Savers 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.

IN THE MATTER OF

JAMES LEDWITH AND MORTON E. ROSENTHAL, TRADING AS WOODFINISHING PRODUCTS COMPANY, AND J. M. THOMAS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4579. Complaint, Aug. 29, 1941—Decision, Dec. 23, 1941

Where two partners engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other woodfinishing materials, and in competitive interstate sale and distribution thereof to furniture manufacturers and others; and the sales manager of their branch office who was their sales agent and representative, visiting the above-mentioned trade and procuring orders therefrom for the aforesaid products; acting together and through said individual—

Gave and offered to give, to finishers, foremen and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of said partners, and to recommend such purchases and the use of said products to their employers, or as promised rewards or gratuities for having induced such purchases by employers or for having recommended the use of such products to said employers;

With effect of diverting trade unfairly to them from their competitors who do not indulge in said acts and practices; 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.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that James Ledwith and Morton E. Rosenthal, individually and as copartners, trading as Woodfinishing Products Co. and J. M. Thomas, individually and as agent for James Ledwith and Morton E. Rosenthal, copartners trading as Woodfinishing Products Company, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows: