

Syllabus

IN THE MATTER OF

CLINTON COMPANY AND CLINTON SALES COMPANY

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

Docket 3800. Complaint, June 1, 1939—Decision, Mar. 17, 1942

Where a corporation, with principal place of business in Iowa, where it had a corn grinding plant with capacity in excess of 32,000 bushels a day and complete facilities for the production of all known corn products, both for household and industrial use; including starch for food and other purposes, glucose or corn syrup, and corn sugar, and, as by-products, gluten feed, corn oil, corn oil cake and corn oil meal; and its wholly owned subsidiary, with principal office at Chicago; together long engaged in manufacture, sale and distribution of said corn products, and, in addition, various branded products—

In selling their glucose or corn syrup, used in most kinds of candy, and constituting from 50 to 90 percent of the finished weights of many varieties, largely to manufacturers of candies and mixers of table syrups—

- (a) Discriminated in price unlawfully through sales of glucose of like grade and quality, fulfilled by shipments from their Iowa plant to purchasers in various cities, at differing delivered prices, through a pricing system based upon their Chicago tank car price, to which was added as differentials the amounts of the railroad tariff from Chicago to destinations;
- (b) Discriminated in price unlawfully between different purchasers through adding to their base railroad tank car price, certain "container differentials" which varied from ten cents, where delivery was by tank trucks owned by such corporations, to \$1.08 for 5-gallon cans; and
- (c) Discriminated in price between different purchasers through preferential operation or application of their booking system—under which, following announcement of new price increase, purchasers were granted a period of five days within which to purchase at the old and lower price, provided shipment was made within 30 days—through making shipments at times to various purchasers, after expiration of 30-day period, at the older and lower price, while concurrently charging other and competing purchasers who ordered after expiration of the 5-day period, the new and higher prices, and through accepting, upon one occasion, an order for glucose at the old and lower price, while concurrently selling the same product to competing purchasers at the new and higher price;

With the result that—

(1) Candy manufacturers located in cities other than Chicago had higher raw material and total costs than did Chicago manufacturers; and manufacturers of low-priced candies selling at a narrow margin of profit—in which the cost of glucose is a major portion of the total manufacturing costs, and in the case of which chain stores and other large quantity purchasers are attracted by a difference as little as one-eighth of a cent per pound—could only sell their product at competitive prices by absorbing the higher glucose costs or by selling on a non-price basis, with

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consequence, in either event, that manufacturer's profit was reduced directly through such absorption or indirectly through reduced sales volume and resulting increased overhead unit costs, and some who otherwise would have entered upon manufacture of candy in cities where glucose prices were higher were deterred from so doing; and

(2) Customer-purchasers engaged in mixing, for sale to wholesalers and other distributors, table sirup, in which approximately 85 percent of content is glucose, and located in cities other than Chicago, had higher raw material and total costs than Chicago mixers; sales of those who sell their product at but a few cents per case lower than a competitor were substantially diminished or prevented by reason of the lower glucose cost to Chicago mixers; and sales and profits of mixers paying the higher prices were less than they otherwise would have been; and potential new mixers were deterred from entering the industry in those cities in which corporations in question sold their corn sirup at such higher prices:

Held, That such discriminations in price resulted in substantial injury to competition among purchasers of glucose by affording material and unjustified price advantages to some and not to others, and constituted violation of Subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Frank Hier and *Mr. P. R. Layton* for the Commission.

Lowenhaupt, Waite & Stolar, of St. Louis, Mo., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are 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 complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Clinton Co., is a corporation organized and existing under the laws of Iowa with its principal office and place of business in the city of Clinton and State of Iowa. Respondent, Clinton Sales Co., is a corporation organized under the laws of the State of Illinois and has its principal office and place of business at 1525 South Sangamon Street in the city of Chicago, State of Illinois. Respondent, Clinton Sales Co., is a wholly owned sales subsidiary of respondent Clinton Co., through which products manufactured by Clinton Co. are sold and distributed. Clinton Co. owns the entire capital stock of Clinton Sales Co., and controls and directs Clinton Sales Co.

PAR. 2. Respondent, Clinton Co., owns and operates a plant at Clinton, Iowa. This plant has a corn grinding capacity in excess of

32,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or corn syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal byproducts of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

The Clinton Co., in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plant and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the State in which their factory is located across State lines to purchasers thereof located in States other than the State in which respondents' said plant is located in competition with other persons, firms, and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are en-

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gaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

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 (Clayton Act), as amended by act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on June 1, 1939, issued and subsequently served its complaint in this proceeding upon respondents Clinton Co., a corporation, and Clinton Sales Co., a corporation, charging them with discrimination in price among purchasers of their products in violation of subsection (a) of section 2 of said act, as amended.

After the issuance of said complaint and the filing of respondents' answer thereto, certain stipulated facts were read into the record and exhibits introduced before an examiner of the Commission theretofore duly designated by it, and such evidence was duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint, answer, evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the

public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Clinton Co. is a corporation organized and existing under the laws of the State of Iowa, having its principal office and place of business in Clinton, Iowa. Clinton Sales Co. is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business at Chicago, Ill. Clinton Sales Co. is a wholly owned subsidiary of the Clinton Co. and is engaged in the sale and distribution of the products manufactured by the Clinton Co.

PAR. 2. For many years respondents have been, and are now, engaged in the business of manufacturing, selling, and distributing products derived from corn. They have a plant at Clinton, Iowa, which has a corn grinding capacity in excess of 32,000 bushels per day and complete facilities for the production of all known corn products both for household and industrial use. The principal products so made are starch, both for food and other purposes, glucose or corn syrup, and corn sugar. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and in the mixing of syrups. The principal byproducts resulting from such processing of corn are gluten feed, corn oil, corn oil cake, and corn oil meal. In addition to the products sold by respondents in bulk, they also produce and sell various branded products.

PAR. 3. In the course and conduct of their business as aforesaid respondents have been, and are now, selling and shipping such commodities in commerce between and among the various States of the United States from the State in which their plant is located across State lines to purchasers thereof located in other States, and maintain, and have maintained, a course of trade in commerce among and between the various States of the United States.

PAR. 4. (a) Respondents sell glucose or corn syrup largely to manufacturers of candy and mixers of table syrups on a delivered price basis, the price in each instance depending upon the location of the purchaser freightwise to Chicago, Ill. Respondents' railroad tank car price in Chicago is the base from which its prices to purchasers at all other locations are determined, and such other prices are arrived at by adding to the Chicago tank car price the amount of the railroad tariff from Chicago to the purchaser's location. This pricing plan has been followed by respondents since the establishment of their plant at Clinton, Iowa, in 1906, and similar pricing

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plans have been, and are being, used by respondents' competitors. These competitors and the plant locations of each are: Corn Products Refining Co., with plants at Chicago, Ill., and Kansas City, Mo.; A. E. Staley Manufacturing Co., Decatur, Ill.; Penick & Ford, Ltd., Inc., Cedar Rapids, Iowa; Anheuser-Busch, Inc., St. Louis, Mo.; Union Starch and Refining Co., Granite City, Ill.; American Maize-Products Co., Roby, Ind.; and Hubinger Co., Keokuk, Iowa.

(b) In order to illustrate respondents' pricing system to customers in various cities of the United States, their prices per hundred pounds for 43° glucose in railroad tank car lots to customers in a few of such cities on particular dates were:

Location of purchaser	AUG. 1, 1936	AUG. 1, 1937	AUG. 1, 1938	AUG. 1, 1939
Chicago, Ill.....	\$2.94	\$3.04	\$2.29	\$2.09
Clinton, Iowa.....	3.11	3.20	2.47	2.27
Dubuque, Iowa.....	3.11	3.20	2.47	2.27
Marshalltown, Iowa.....	3.23	3.31	2.59	2.39
Sioux City, Iowa.....	3.32	3.40	2.69	2.49
Sioux Falls, S. Dak.....	3.33	3.41	2.70	2.50
Fort Worth, Tex.....	3.72	3.77	3.09	2.89
Dallas, Tex.....	3.72	3.77	3.09	2.89
Kansas City, Mo.....	3.32	3.40	2.69	2.49
St. Louis, Mo.....	3.11	3.20	2.47	2.27
Salt Lake City, Utah.....	3.79	3.74	3.06	2.86
Ogden, Utah.....	3.79	3.74	3.06	2.86
Lincoln, Nebr.....	3.37	3.45	2.74	2.64
Oklahoma City, Okla.....	3.62	3.68	2.99	2.79

At all times between the dates set forth substantially the same differences in and relationships between and among said prices illustrated above existed as to purchasers so located.

(c) The railroad tariff stated in cents per hundred pounds of glucose from Chicago, Ill., to each of the cities shown in the table above for the periods shown was:

Cities	June 19, 1936, through Dec. 31, 1936	Jan. 1, 1937, through Apr. 10, 1937	Apr. 20, 1937, through Dec. 19, 1937	Dec. 20, 1937, through Mar. 27, 1938	Mar. 28, 1938, through Aug. 14, 1938	Aug. 15, 1938, through —
Clinton, Iowa.....	17	18	16	17½	17½	18
Dubuque, Iowa.....	17	18	16	17½	17½	18
Marshalltown, Iowa.....	29½	27½	27½	30½	30	30
Sioux City, Iowa.....	38	36	36	39	40	40
Sioux Falls, S. Dak.....	39	37	37	40	41	41
Fort Worth, Tex.....	78	73	73	80	80	80
Dallas, Tex.....	78	73	73	80	80	80
Kansas City, Mo.....	38	36	36	39	40	40
St. Louis, Mo.....	17	16	16	17½	17½	18
Lincoln, Nebr.....	43	41	41	44	45	45
Oklahoma City, Okla.....	68	64	64	70	70	70
Salt Lake City, Utah.....	85	80	70	73	77	77
Ogden, Utah.....	85	80	70	73	77	77

(d) All sales of glucose made by respondents are fulfilled by shipments made from their plant at Clinton, Iowa, and the railroad tariff stated in cents per hundred pounds applicable to such shipments from Clinton, Iowa, to the above-named cities were as follows for the periods shown:

Cities	June 19, 1936, through Dec. 31, 1936	Jan. 1, 1937, through Apr. 19, 1937	Apr. 20, 1937, through Dec. 19, 1937	Dec. 20, 1937, through Aug. 14, 1938	Aug. 15, 1938, through —
Chicago, Ill.	17	16	16	17½	18
Dubuque, Iowa.	12	11	11	12	12
Marshalltown, Iowa.	19½	17½	17½	19½	19½
Sioux City, Iowa.	31	28	28	31	31
Sioux Falls, S. Dak.	32½	29½	29½	32½	32½
Fort Worth, Tex.	73	70	70	77	77
Dallas, Tex.	73	70	70	77	77
Kansas City, Mo.	31	28	28	31	31
St. Louis, Mo.	17½	16	16	17½	18
Lincoln, Nebr.	36	33	33	36	36
Oklahoma City, Okla.	64	61	61	67	67
Salt Lake City, Utah.	85	80	65½	68½	72
Ogden, Utah.	85	80	65½	68½	72

From a comparison of the price differences as among customers in different cities with the applicable railroad rates it is evident that the price differences created by respondents' pricing system do not reflect actual differences in delivery costs to respondents. Milling in transit and other rate adjustments would not operate to cause respondents' actual delivery costs to coincide with such price differences.

PAR. 5. As a part of their pricing plan to purchasers of glucose or corn syrup, respondents follow the practice of granting to purchasers a period of 5 days after the announcement of any price increase by them within which purchasers may buy at the price which was in effect before the increase, provided shipment of glucose so ordered be made within 30 days after the date of the price increase. Upon orders entered within such 5-day period respondents at times have shipped glucose to various purchasers after the expiration of the 30-day period, charging and receiving therefor the older and lower price, while at the same time charging and receiving the new increased and higher prices for similar glucose from other and competing purchasers who ordered after the expiration of the 5-day period. Upon one occasion respondents accepted an order for glucose at the old and lower price after the 5-day period had expired, and sold glucose to such purchaser at the old and lower price while concurrently selling glucose of like grade and quality to other and competing purchasers at the new and higher price. When respond-

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ents accepted said order the purchaser stated that competitors of respondents were offering to sell such glucose to him at such lower price, but respondents did not attempt to determine whether such statement was true.

PAR. 6. In addition to the price differences among their customers created by respondents through the method of basing all delivered prices upon the Chicago price, and price differences created by reason of preferential treatment given some customers in the operation of the order booking system used, respondents create further price differences among their customers by means of "container differentials." Respondents sell corn syrup or glucose in railroad tank car lots, in tank truck or tank wagon quantities, in steel drums, barrels, half barrels, 10-gallon cans, and 5-gallon cans. Respondents' base price for glucose is in tank car quantities, and in the event a purchaser takes delivery in a smaller quantity or smaller containers the price to him is increased above the tank car price as shown in the following table:

Type of container:	Additional price per hundredweight over tank car price	
Barrels.....	\$0.33	
Half barrels	\$0.58	
10-gallon cans.....	\$0.98	
5-gallon cans.....	\$1.08	
Returnable steel drums..	\$0.13	where there is no return freight paid on empty drums.
Returnable steel drums..	\$0.18	where the return freight on the empty drum is 75 cents or less per hundredweight.
Returnable steel drums..	\$0.23	where the return freight on the empty drum is between 76 and 90 cents per hundredweight.
Returnable steel drums..	\$0.28	where the return freight on the empty drum is between 91 cents and \$1 per hundredweight.
Returnable steel drums..	\$0.33	where the return freight on the empty drum is more than \$1 per hundredweight.
Tank trucks	\$0 10	where delivered by respondents' equipment.

PAR. 7. (a) Some of the customers who purchase glucose of like grade and quality from respondents are candy manufacturers located in the cities heretofore named. These manufacturers use the glucose so purchased in the manufacture of candy which is sold in competition with candy manufactured by others to various customers such as wholesalers, retailers, and chain stores, who purchase for resale. Glucose is used to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties, constituting from 5 to 90 percent of the finished weight thereof. The cost of glucose is a substantial part of the raw material cost and of the total cost of manufacturing many

candies and is a major portion of the raw material and total cost of manufacturing candies which have a high glucose content. The higher prices paid for glucose by candy manufacturers located in cities other than Chicago, Ill., such as those previously enumerated, contribute to a greater or lesser degree to their having higher raw material and total costs than those manufacturers located in Chicago, Ill., the degree in each instance depending upon the difference in price and the proportion of glucose used in the candy manufactured. Generally, glucose is used in greater proportion in candies which are sold at but a few cents per pound and at a narrow margin of profit. As to low-priced candies which have no differentiating name or brand, candy manufacturers may, and do, attract customers by selling such candies at as little as one-eighth cent per pound lower than competitors, and this is especially true in selling candies to chain stores and other large quantity purchasers to whom such a small difference in price is determinative in the placing of their business. Under such circumstances, candy manufacturers paying higher prices for glucose can only sell candies at competitive prices by absorbing the higher glucose costs or by increasing the price of such candies and selling them on a nonprice basis. The result in either case is to reduce the manufacturer's profit either directly through such absorption or indirectly through reduced sales volume of high glucose content candies at higher than competitive prices, and in the latter alternative reduced sales volume usually results in increased overhead unit costs. The lower profits or any of the other results stated above to candy manufacturers paying higher prices for glucose diminishes their incentive and ability to compete with those candy manufacturers paying lower prices for glucose and deters some who otherwise would enter the manufacture of candy in those cities where respondents' glucose prices are higher.

(b) Some customers who purchase glucose from respondents are located in the cities previously named and are engaged in the business of mixing or preparing sirup for table use for sale to wholesalers and other food product distributors. Such table sirups contain approximately 85 percent of glucose or corn sirup. A typical and usual method of packaging and selling such mixed table sirup is in cases containing six 10-pound cans or twelve 5-pound cans, or 60 pounds net of table sirup, of which approximately 50 pounds is glucose or corn sirup sold by respondents. The higher prices paid for such glucose by table sirup mixers located in cities other than Chicago, Ill., contributes in greater or lesser degree to their having higher raw material and total costs than the comparable costs of table sirup

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mixers located in Chicago, Ill., the degree in each case depending upon the difference in price paid for glucose. Table sirup mixers may, and do, attract customers by selling table sirup at but a few cents per case lower than the price at which a competitor is selling. The lower cost of glucose to table sirup mixers located in Chicago, Ill., when reflected in the selling price of such table sirup, substantially diminishes or prevents sales of such table sirup by mixers located in cities other than Chicago, Ill., to customers in areas where, and to the extent that, transportation costs on such mixed table sirup from Chicago, Ill., to such areas is less than the amount of the difference in the price or cost of glucose to such mixers, or is less than such price difference plus transportation costs from such other cities to such areas. If the table sirup mixers paying the higher prices for glucose were paying lower prices they could, and would, sell table sirup mixed by them to customers located in areas where they cannot now sell to the extent and degree that they would be able to reduce their delivered prices because of lower glucose prices. Under such circumstances the sales and profits of table sirup mixers paying the higher prices for glucose have been less than they would have been, or would be, if the price of such glucose were lower; and such lessening or lowering of sales and profits has diminished their incentive to compete with table sirup mixers paying lower prices for glucose, and has deterred potential new mixers of table sirup from entering the industry in those cities where respondents sell their corn sirup at such higher prices.

PAR. 8. Respondents have introduced no evidence to show that the aforesaid price differentials, or any of them, as among their customers, made only due allowance for differences in the cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities, if any, in which glucose was to such purchasers sold or delivered.

CONCLUSION

The discriminations in price by respondents, as hereinabove set forth, have resulted, and do result, in substantial injury to competition among purchasers of glucose by affording material and unjustified price advantages to some purchasers and not to others, and 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 (Clayton Act), as amended by the act of June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answer thereto, certain stipulated facts read into the record and exhibits introduced, briefs filed herein, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (a) of section 2 of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by the act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondents Clinton Co., a corporation, and Clinton Sales Co., a corporation, and their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of glucose or corn syrup unmixed in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade and quality in the manner and degree set forth in paragraphs 4 and 6 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

2. Discriminating in price between different purchasers of glucose by the methods set out in paragraph 5 of the findings as to the facts herein, or otherwise discriminating in price between purchasers by means of the booking or entry of orders for glucose or corn syrup unmixed, where the price differences between purchasers resulting therefrom substantially approximate or exceed those set out in paragraphs 4 or 6 of the findings as to the facts herein, provided this shall not prohibit actual sales of glucose or corn syrup unmixed for future delivery which do not involve such discriminations in price at the time of actual sale.

3. Otherwise discriminating in price as between purchases of glucose or corn syrup unmixed of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which customers of respondent are engaged, or to injure, destroy, or prevent competition with any recipient of the benefit of such discrimination, provided that this shall not prevent price differences which make only due allowance for

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differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said glucose is to such purchasers sold or delivered, and provided further that this shall not prevent respondents from showing that any lower price to any purchaser was made in good faith to meet an equally low price of a competitor of respondents.

It is further ordered, That respondents shall, within 60 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF
WARNER'S RENOWNED REMEDIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4063. Complaint, Mar. 12, 1940—Decision, Mar. 23, 1942*

Where a corporation, engaged in interstate sale and distribution, among other medicinal preparations, of its "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," which were sold separately and in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," and "Formula No. 6 Method"; by means of advertisements through the mails, newspapers and periodicals, and by circulars, leaflets, and other advertising literature—

- (a) Represented that its said preparations were cures or remedies for functional sterility and constituted a competent and effective treatment therefor, and possessed beneficial properties in relation to the functioning of the female reproductive organs;
- (b) Represented that one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation, and that its products served to synchronize such phenomena and thereby bring about pregnancy; and that another general cause of functional sterility is constriction of the mouth of the womb, which prevents fertilization, causing scanty menstruation and toxic accumulation, and that "Warner's Renowned Prescription No. 6" would relax the tension so that the mouth of the womb would be sufficiently open to permit pregnancy and prevent toxic accumulations;
- (c) Represented that the alkalizing hot douche provided by "Prescription No. 6" counteracted an acid condition of the womb, represented as another general cause of functional sterility, and thereby made fertilization or pregnancy possible; and that use of its products would tone up the female organs and relieve sluggishness, and thereby overcome functional sterility; and
- (d) Represented that its preparation would relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period;

The facts being that such assertions as to ailments and their causes, and the functions concerned, were erroneous; its said preparations would not, either by reason of the theory upon which based or the ingredients therein contained accomplish results claimed; they were not, used either singly or in combination, cures or effective treatments for sterility, functional or otherwise, and possessed no beneficial properties with relation to the functioning of the female reproductive organs; and there was nothing in its "Prescription No. 6" or its combination treatment which could in any way affect the peculiar sensations in the breasts associated with menstruation; With the effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of thereby inducing it to purchase its said preparations:

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