

Order

37 F. T. C.

IN THE MATTER OF
UNITED STATES MALTSTERS ASSOCIATION, ET AL.
MODIFIED CEASE AND DESIST ORDER

Docket 3555. Aug. 13, 1943

Order modifying cease and desist order in proceeding in question in which original findings and order issued on December 29, 1942, 35 F. T. C. 797, so as to require respondents, their officers, etc., in connection with offer, etc., in commerce, of malt, to cease and desist from—

Entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and other not parties hereto, to establish, fix or maintain prices, terms or condition of sale for malt, or adhere or promise to adhere thereto; hold or participate in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent Association; establish, use, etc., basing points and delivered prices; exchange, distribute or relay among manufacturing respondents or through respondent Association price lists or other information showing future prices; etc., as in detail specified in order below set out.

Before *Mr. Robert S. Hall* and *Mr. Webster Ballinger*, trial examiners.

Mr. Edward L. Smith for the Commission.

Mr. William W. Corlett, of New York City, and *Poppenhusen, Johnston, Thompson & Raymond*, of Chicago, Ill., for respondents; together with *Hubbard, Baker & Rice*, of Chicago, Ill., for respondent *Albert Schwill & Co.*

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before *Robert S. Hall*, a trial examiner of the Commission theretofore duly designated by it, report of *Webster Ballinger*, a trial examiner appointed to prepare and file a trial examiner's report upon the evidence (vice *Robert S. Hall*, deceased), and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having duly made and entered its findings as to the facts, conclusion, and order to cease and desist, dated December 29, 1942; and the Commission having further considered said order to cease and desist heretofore issued and being of the opinion that a modified order to cease and desist should be issued in said

cause; and the Commission having given due notice to counsel for the respondents; and counsel for the respondents having waived objection to the issuance of said modified order; and transcript of the record in the proceeding not having been filed in any Circuit Court of Appeals of the United States; and the Commission, having duly considered the record and being now fully advised in the premises, issues this its modified order to cease and desist:

It is ordered, That the respondents, United States Maltsters Association, an unincorporated association; Chilton Malting Co., a corporation; The Columbia Malting Co., a corporation; Froedtert Grain & Malting Co., a corporation; Wm. E. Kreiner & Sons, Inc., a corporation; The Kurth Malting Co., a corporation; The Ladish-Stoppenbach Co., a corporation; George J. Meyer Malt & Grain Corporation, a corporation; Milwaukee Western Malt Co., a corporation; Northwestern Malt & Grain Co., a corporation; Perot Malting Co., a corporation; Rahr Malting Co., a corporation; H. W. Rickel & Co., a corporation; L. Rosenheimer Malt & Grain Co., a corporation; Schreier Malting Co., a corporation; Albert Schwill & Co., a corporation; Daniel D. Weschler & Sons, Inc., a corporation; West Bend Malting Co., a corporation; and Wisconsin Malting Co., a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of malt in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for malt, or adhering to or promising to adhere to the prices, terms, or conditions of sale so fixed.

2. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent United States Maltsters Association or any other medium or agency concerning proposed or future prices, terms, or conditions of sale.

3. Exchanging, distributing, or relaying among manufacturing respondents, or any of them, or through respondent United States Maltsters Association or through any other medium or central agency, price lists or other information showing future prices, terms, or conditions of sale; or which show current prices, terms, or conditions of sale for the purpose, or which have the tendency or effect, of fixing prices for malt.

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4. Authorizing or permitting examination of the books or other records of the respondent manufacturers by any agent of the United States Malsters Association or by any agent of the respondents, or any of them, to determine or check the prices at which any given respondent manufacturer has made sales, is currently making sales, or expects to make sales.

5. Formulating, establishing, putting into operation, continuing, or using in any way, any reporting plan using Chicago, Illinois, or any other common basing point, which results in the establishment and maintenance among the respondent members or any two or more of them of uniform delivered prices to any given destination.

6. Quoting prices, terms, and conditions of sale determined under a method or system of a common basing point for the purpose, or with the effect, of making the delivered price quotation of any two or more of the respondents the same to any given destination.

7. Formulating or putting into operation any other practice or plan which has the purpose, or the tendency or effect, of fixing prices for malt; or employing or utilizing any of the acts or practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of malt.

8. Employing or utilizing respondent United States Malsters Association or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to Interior Malt & Grain Co., a corporation.

It is further ordered, That the respondents shall, within 60 days after 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.

Syllabus

IN THE MATTER OF
DENTISTS' SUPPLY COMPANY OF NEW YORK

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, AND SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4915. Complaint, Feb. 18, 1943—Decision, Aug. 17, 1943

Where the largest manufacturer in the United States of artificial teeth, engaged in competitive interstate sale and distribution thereof, and selling more than 50 percent of the total production to over 200 authorized wholesalers or dental supply houses for resale to dental laboratories and to dentists who, however, customarily purchase such dental requirements from the former;

Selling its said product under a uniform discount schedule under which it granted its said dealers a 40 percent discount, plus 9 percent for payment within thirty days, from list, and an additional 7½ percent in event of sales to laboratories or dentists in \$300 quantities; and under a system of bonus contract agreements superimposed thereon, solicited from dental laboratories as a special inducement to make purchases of its dealers in amounts in excess of \$1,000 annually—

- (a) Discriminated in price through such agreements under which said laboratories received 10 percent of free bonus teeth on annual purchases between \$1,000 and \$2,500; 15 percent on purchases ranging from \$2,500 to \$5,000; 20 percent on those from \$5,000 to \$10,000; and 25 percent on those exceeding said sum;

With the result that purchasers able to take advantage thereof, paid a lower price for teeth, and were enabled either to undersell competitors or furnish better facilities and service to dentist-customers, or both;

- (b) Granted and allowed chain dental laboratory buyers, under its said system, the bonus applicable to the volume of teeth represented by pooling orders of their unit laboratories, as made up of purchases from many of its dealers;

With result that many such units received discounts, to which, on the basis of their separate purchases, they were not entitled, and which were larger than those received by competitors:

- (c) Employed its said bonus system in connection with sales made from its New York City depot to dental laboratories in area concerned in competition with its dealers therein;

With result that purchaser-customers able to take advantage of such bonus system secured a lower unit price than competitors, and, thus favored, were enabled either to undersell latter or to furnish better facilities and service to customers, or both; and

- (d) Paid to dealers upon amounts purchased of them by laboratories which had qualified for free products in accordance with terms of such bonus agreements, secondary discounts over and beyond those contained in its aforesaid regular discount schedule, of 8½ percent and, later, 12½ percent;

With result that amount paid by such favored dealers for their regular purchases was decreased accordingly and they paid lower unit prices for its teeth than others not thus favored, and said bonus system, under which the