

Syllabus

IN THE MATTER OF

NATIONAL BISCUIT 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 SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5013. Complaint, July 20, 1943—Decision, Feb. 23, 1944

Where the largest producer and distributor of packaged bakery products in the United States, baking products in some 46 plants in 25 states and the District of Columbia, operating 252 branch sales offices and selling its products both direct and through such sales offices or agencies to corporate chain retail grocery stores, voluntary and cooperative chain retail grocery stores, independent grocery retailers, and independent wholesale grocery jobbers in substantial competition with other similar concerns;

In selling its said bakery products to its customers—many of whom were competitively engaged with each other and with customers of its competitors in the resale of such products—subject to (1) a regular trade discount of 5% from invoice price plus a cash discount of 1% for payment within a specified time; and (2) an additional so-called "headquarters quantity discount" schedule under which it granted two series of graduated discounts, governed, respectively, by the customer's total purchases per month, and his average monthly purchases per retail store: under the former schedule granting an additional discount of (a) 1% to those making monthly purchases of \$750 to \$5,000, (b) 2% on purchases from \$5,000 to \$10,000, (c) 3% on those from \$10,000 to \$150,000, and (d) 3½% on purchases of \$150,000 a month or more; and, under the second series, granting additional discounts in aforesaid brackets pursuant to which customers in (a) bracket received ½% additional if their individual store purchases averaged from \$15 to \$25 a month, 1% on such purchases from \$25 to \$35, and 1½% on purchases of \$35 or over; in (b) received ½% additional if their individual monthly store purchases averaged from \$25 to \$35, and 1% additional for average purchases of \$35 or more; in (c) received ½% additional on such purchases between \$30 and \$40 a month, 1% between \$40 and \$50, and 1½% on \$50 or over; and in (d) received ½% additional on such purchases of from \$30 to \$40, and 1% on those of \$40 and above—

Discriminated in price by selling its said products to some of its customers at higher prices than it sold products of like grade and quality to their competitors, through use of aforesaid "headquarters discount schedule," under which it made lower prices to some customers based upon the total quantity sold to all of their separate outlets, although separate delivery was made to the several branches, when such total amounted to certain required minima during a single month, without regard to the volume delivered to the respective branches or outlets;

Effect of which discrimination had been or might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those to whom they were denied, and also to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in the trade areas where they and their disfavored competitors were engaged in business:

Held, That under facts and circumstances set forth, corporation in question had discriminated in price in the sale of its bakery packaged food products between different purchasers in violation of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Complaint

38 F. T. C.

Mr. John T. Haslett for the Commission.

Mr. John W. Davis, Mr. Edwin Foster Blair and *Mr. George H. Coppers*, 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 been and is now violating the provisions of subsection (a) 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:

PARAGRAPH 1. Respondent, National Biscuit Company, is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 449 West 14th Street, New York, N. Y.

PAR. 2. Respondent corporation is now, and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in all parts of the United States. Among the products manufactured and sold by the respondent in the various States of the United States are biscuits, crackers, and cakes. The respondent manufactures and sells approximately 500 different varieties of such bakery packaged food products. Respondent by volume of sales is the largest producer and distributor of bakery packaged food products in the United States. The production of the respondent's products is carried on in 46 plants owned and operated by it, located in 25 States of the United States and in the District of Columbia.

Respondent maintains and operates 252 branch sales offices or agencies for the distribution of its products and ships its products from one or more of its plants to such sales offices or agencies, from which they are distributed as hereinafter stated. Some of said sales offices or agencies are located in States other than the States in which the plants serving them are located, and in such cases, respondent's goods are transported across State lines from plant to sales office or agency.

In the various trade areas respondent distributes its products from its plants or sales offices or agencies, or both, by trucks owned by respondent and operated by employed driver-salesmen. The respondent employs approximately 300 such driver-salesmen who make sales and truck deliveries to the respondent's various customers. Such driver-salesmen operate the respondent's trucks from the various plants or sales offices or agencies over certain specified routes, some of which cross State lines. Each driver-salesman is employed to solicit business and to take orders for and sell respondent's products to customers and prospective customers located along his route, as well as to transport and deliver such products to such customers. Such driver-salesmen in the ordinary course of their employment receive and accept from customers orders for respondent's products to be delivered later, and as a result of such orders, do at a subsequent time transport and deliver such products to such customers. Respondent sells its products direct and through such sales offices or agencies to corporate chain retail grocery stores, voluntary and cooperative chain retail grocery stores and voluntary and cooperative wholesale chains, independent retailers, and wholesale grocery jobbers.

The respondent causes such bakery products, when sold by it to its various customers, to be transported from its various places of business located in the various States of the United States and in the District of Columbia to such customers. Some such customers are located in States other than the State where the respondent's products are manufactured or stored, and in such cases, the respondent causes such products to be shipped from its sales office or agency or plant located in such State across State lines to such customers. Others of respondent's customers are located in the States in which respondent has its places of business.

Respondent's business is one which is managed, controlled and directed from its principal office in New York, N. Y., and which is operated with the objective of marketing its products through the channels of commerce in all parts of the United States to retailers who sell to the consuming public.

There is and has been at all times mentioned a continuous course of trade and commerce in said products between respondent's producing plants or sales offices or agencies and the purchasers of such products, some of which are located in States other than the State in which the respondent's producing plants or sales offices or agencies are located, as aforesaid. Respondent is engaged in interstate commerce and the transactions involved in the practices charged in this complaint as being unlawful are transactions in the course of such commerce.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now and has been in substantial competition with other corporations and with individuals and partnerships engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in the United States.

Many of respondent's customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of bakery packaged food products within the trading areas in which the respondent's said customers, respectively, offer for sale and sell the said products purchased from the respondent.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said products by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

The respondent grants and allows to all of its customers a regular trade discount of 5% to be deducted from the invoice price and a cash discount of 1% if the invoice is paid within a specified time. The price discriminations herein alleged and those hereinafter set forth are in the form of discriminatory additions to the regular trade discount of 5% and the cash discount of 1%.

PAR. 5. The respondent has discriminated in price by the use of a so-called headquarters quantity discount schedule, whereby it has sold to some customers at higher prices than it has sold goods of like grade and quality to other customers who are in competition with them in the resale of said products within the United States. The so-called "headquarters discount" schedule includes two series of graduated discounts, one of which is governed by the customer's total purchase per month, and the other by the customer's average monthly purchase per retail store. The

Complaint

38 F. T. C.

"headquarters discount" schedule used by respondent is more particularly described as follows:

(a) Respondent grants to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 1% "headquarters discount" on purchases of \$750 or more but less than \$5,000 per month, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the "chain store" customers receiving such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$15 per month but less than \$25.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$25 per month but less than \$35.

An additional $1\frac{1}{2}$ % discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$35 per month or over.

To customers whose aggregate monthly purchases amount to less than \$750 per month of the respondent's various commodities, the respondent does not and has not granted or allowed any discount whatsoever to such customers.

(b) The respondent grants and allows to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 2% "headquarters discount" on purchases of \$5,000 or more but less than \$10,000 per month, regardless of the average monthly purchases of the individual retail grocery stores owned, controlled or affiliated with such "chain store" customers receiving the discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an individual average purchase of the respondent's products of \$25 per month, but less than \$35.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual purchase of the respondent's products of \$35 or more per month.

(c) The respondent grants and allows to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 3% "headquarters discount" on purchases of \$10,000 or more but less than \$150,000 per month, regardless of the average monthly purchases of the individual retail grocery stores owned, controlled or affiliated with such "chain store" customers receiving the discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 but less than \$50 per month.

An additional 1½% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$50 or over per month.

(d) The respondent grants and allows to some of its "chain store" customers who are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of respondent's customers who do not receive it, a 3½% "headquarters discount" on purchases of \$150,000 or more per month, regardless of the average monthly purchases of the individual retail grocery stores owned, controlled or affiliated with such "chain store" customers receiving the discount.

An additional ½ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 per month or over.

PAR. 6. In addition to the discriminations effected by the aforementioned "headquarters discounts" respondent discriminates in price between different purchasers of its products who are in competition with each other by making lower prices on bakery packaged food products to some customers based upon the total quantity or volume sold and delivered to all of the separate branches or outlets of the said customers, although separate delivery is made to the several branches or outlets of such customers if and when such total quantity or volume amounts to certain required minima during a single month, without regard to the quantity or volume delivered to the respective branches or outlets of such customers.

PAR. 7. The effect of the discrimination in price generally alleged in paragraph 4 hereof, and of the discriminations specifically set forth in paragraphs 5 and 6 hereof, has been or may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged, and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those to whom they are denied. The effect also has been or may be to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States where said favored customers and their disfavored competitors are engaged in business.

Such discriminations in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce, in the manner and form aforesaid, are in violation of the provisions of Subsection 2 (a) of Section 1 of said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended U.S.C. Title 15, Sec. 13, and for other purposes."

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 Section 1 of an Act entitled "An Act to amend Section 2 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U.S.C. Title 15, Sec. 13) and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on July 20, 1943, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging respondent with violating the provisions of subsection (a) of Section 2 of said Act as amended.

After the issuance of said complaint a stipulation was entered into between W. T. Kelley, Chief Counsel for the Commission, and the respondent, subject to the approval of the Commission, containing a statement of certain facts taken as the facts for the purpose of this proceeding and authorizing the Commission to proceed upon such statement and to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument and the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the stipulation of facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that subsection (a) of Section 2 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. Respondent, National Biscuit Company, is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 449 West 14th Street, New York, N. Y.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in all parts of the United States. Among the products manufactured and sold by the respondent in the various States of the United States are biscuits, crackers and cakes. The respondent manufactures and sells approximately 500 different varieties of such bakery packaged food products. Respondent, by volume of sales, is the largest producer and distributor of bakery packaged food products in the United States. The production of respondent's products is carried on in some forty-six plants owned and operated by it located in twenty-five States of the United States and in the District of Columbia.

Respondent maintains and operates 252 branch sales offices or agencies for the distribution of its products and ships its products from one or more of its plants to such sales offices or agencies, from which they are distributed as hereinafter stated. Some of said sales offices or agencies are located in States other than the States in which the plants serving them

are located and in such cases, respondent's goods are transported across State lines from plant to sales office or agency.

In the various trading areas in which the respondent operates, it sells and distributes its products from its plants or sales offices or agencies or both by the use of company employed salesmen and deliverymen. The respondent employs approximately 2500 salesmen to take orders for and sell respondent's biscuits, crackers and cake products, as a result of which, deliverymen who operate the delivery trucks of the respondent call upon and make delivery to the respondent's various customers. Respondent sells its products direct and through such sales offices or agencies to corporate chain retail grocery stores, voluntary and cooperative chain retail grocery stores and voluntary and cooperative wholesale chain stores, independent grocery retailers and independent wholesale grocery jobbers.

The respondent causes such bakery products, when sold by it to its various customers, to be transported from its various places of business located in the various States of the United States and in the District of Columbia to such customers. Some such customers are located in States other than the State where the respondent's products are manufactured or stored, and in such cases the respondent causes such products to be shipped from its sales office or agency, or plant located in such State, across State lines to such customers. Others of respondent's customers are located in the States in which respondent has its place of business.

Respondent's business is managed, controlled and directed from its principal office in New York City and is operated with the objective of marketing its products through the channels of commerce in all parts of the United States to retailers who sell to the consuming public.

There is and has been at all times mentioned a continuous course of trade and commerce in said products between respondent's producing plants or sales office or agencies and the purchasers of such products, some of which are located in the States other than the State in which the respondent's producing plants or sales offices or agencies are located, as aforesaid. Respondent is engaged in interstate commerce and the transactions involved and the practices charged by the Commission's complaint, issued under date of July 20, 1943, as being unlawful, are transactions and practices in the course of such commerce.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now and has been in substantial competition with other corporations and with individuals and partnerships engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery packaged food products in the United States.

Many of respondent's customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of bakery packaged food products within the trading areas in which the respondent's said customers, respectively, offer for sale and sell the said products purchased from the respondent.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said products by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

The respondent grants and allows to all of its customers a regular trade discount of 5% to be deducted from the invoice price and a cash discount of 1% if the invoice is paid within a specified time.

The price discriminations herein referred to are in the form of discriminatory additions to the nondiscriminatory regular trade discount of 5% and the nondiscriminatory cash discount of 1%.

The price discriminations herein referred to are effected by the use of a so-called "headquarters quantity discount" schedule. The so-called "headquarters discount" schedule includes two series of graduated discounts, one of which is governed by the customer's total purchases per month, and the other by the customer's average monthly purchases per retail store. The "headquarters quantity discount" schedule used by respondent is more particularly described as follows:

(a) Respondent grants a 1% "headquarters quantity discount" to its customers who purchase \$750 or more, but less than \$5,000 per month, on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$15 per month but less than \$25.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$25 per month but less than \$35.

An additional $1\frac{1}{2}$ % discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual store purchase of the respondent's products of \$35 per month or over.

To customers whose aggregate monthly purchases amount to less than \$750 per month of the respondent's various commodities, the respondent does not and has not granted or allowed any headquarters quantity discount whatsoever.

(b) Respondent grants a 2% "headquarters quantity discount" to its customers who purchase \$5,000 or more but less than \$10,000 per month on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an individual average purchase of the respondent's products of \$25 per month, but less than \$35.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average individual purchase of the respondent's products of \$35 or more per month.

(c) Respondent grants a 3% "headquarters quantity discount" to its customers who purchase \$10,000 or more but less than \$150,000 per month on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 but less than \$50 per month.

An additional $1\frac{1}{2}\%$ discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$50 or over per month.

(d) Respondent grants a $3\frac{1}{2}\%$ "headquarters quantity discount" to its customers who purchase \$150,000 or more per month on purchases of bakery packaged food products, regardless of the average monthly purchases of the individual retail food stores owned, controlled or affiliated with the customers receiving such discount. Such customers are engaged in the resale of bakery packaged food products of like grade and quality in competition with other of the respondent's customers who do not receive such discount.

An additional $\frac{1}{2}$ of 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$30 but less than \$40 per month.

An additional 1% discount is granted to such customers if the individual retail grocery stores owned, controlled or affiliated with them have an average monthly purchase of the respondent's products of \$40 per month or over.

By the use of the aforesaid "headquarters discount schedule," respondent discriminates in price between different purchasers of its products who are in competition with each other by making lower prices on bakery packaged food products to some customers based upon the total quantity or volume sold and delivered to all of the separate branches or outlets of the said customers, although separate delivery is made to the several branches or outlets of such customers if and when such total quantity or volume amounts to certain required minima during a single month, without regard to the quantity or volume delivered to the respective branches or outlets of such customers.

PAR. 5. The effect of the discrimination in price set forth in paragraph 4 hereof has been or may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged, and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those to whom they are denied. The effect also has been or may be to tend to create a monopoly in those purchasers

Order

38 F. T. C.

receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States where said favored customers and their disfavored competitors are engaged in business.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent National Biscuit Company had discriminated in prices in the sale of its bakery packaged food products between different purchasers in violation of subsection (a) 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 and the 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 the presentation of argument 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) 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, as amended by the Robinson-Patman Act.

It is ordered, That the respondent, National Biscuit Company, a corporation, and its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of bakery packaged food products in interstate commerce for use or resale, do forthwith cease and desist:

1. From selling such commodities of like grade and quality to competing purchasers at uniform prices and thereafter granting varying discounts therefrom in the manner and under the circumstances found in paragraph 4 of the aforesaid findings as to the facts.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 4 of the aforesaid findings as to the facts.

3. From otherwise discriminating in price between purchasers of bakery packaged food products of like grade and quality, in any manner or degree substantially similar to the manner and degree of the discriminations referred to in paragraph 4 of the aforesaid findings as to the facts; or in any other manner resulting in price discriminations substantially equal in amount to the aforesaid discriminations, except as permitted by Section 2 of the Clayton Act as amended.

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

IN THE MATTER OF

BEN KALISH

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

Docket 4974. Complaint, May 29, 1943—Decision, Mar. 2, 1944

Where an individual engaged in the manufacture and interstate sale and distribution of furs and fur garments; in advertisements on letterheads and invoices and in other ways—

- (a) Represented, through use of words "Black Kid Caracul" that certain of his said products were made from lamb peltries of the Karakul breed of sheep and characterized by open type curl, when in fact they were made from kid peltries; and
- (b) Represented through use of such words and phrases as "Silak Seal," "Silak Beaver," "Beaver," "Mendoza Beaver," and "Beaver Coney" that certain furs and fur garments manufactured from rabbit skins were made from seal and beaver peltries;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such mistaken belief, to purchase his said products:

Held, That such acts, practices and methods, 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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Reuben B. Shemitz, of New York City, for respondent.

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 Ben Kalish, an individual, herein-after referred to as respondent, has violated the provisions of the 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:

PARAGRAPH 1. Respondent, Ben Kalish, is an individual, engaged in manufacturing and selling furs and fur garments. His principal office and place of business are at 330 Seventh Avenue, New York, N. Y.

Respondent causes and has caused said furs and fur garments, when sold by him, to be transported from his place of business in the State of New York to various purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained; a course of trade in said furs and fur garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business respondent advertised certain of his furs and fur garments by means of letterheads, invoices and in various other ways, as "Black Kid Caracul" and "Cara-