

IN THE MATTER OF

HOLZBEIERLEIN & SONS, INC.

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

Docket 5020. Complaint, July 29, 1943—Decision, Aug. 16, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its "Bamby" bread to customers competitively engaged with one another in the sale of said product to consumers and to others for resale to consumers;

Paid to a preferred customer \$250.00 a month as compensation for advertising services and facilities contracted to be furnished and furnished by said customer in connection with the sale of its said "Bamby" bread, with the understanding and agreement that said customer would advertise said bread in a weekly newspaper and by hand bills and bulletins; without making payment of advertising allowances available on proportionally equal terms to any other customers competitively engaged in the distribution of its said product:

Held, That such contracts to pay and payments for advertising services and facilities, without making such payments available on proportionally equal terms to other customers competing with said favored customer, constituted violation of Sec. 2 (d) of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Harry A. Grant, of Washington, D. C., 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 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), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Holzbeierlein & Sons, Inc., 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 1849 Seventh Street, Northwest, Washington, D. C.

PAR. 2. Respondent corporation is now and has been since prior to June 19, 1936, engaged in the business of processing and manufacturing and offering for sale, selling and distributing bakery bread in the several States of the United States and the District of Columbia, and causes said product to be shipped and transported from its place of business to the purchasers thereof who are located in the several States of the United States other than the District of Columbia in which respondent's place of business is located. The respondent distributes its bakery bread under the name of "Bamby Bread." There is and has been at all times mentioned

a continuous course of trade and commerce in the said product across State lines between respondent's bakery and warehouse and the purchasers of said product. Such product is sold and distributed for use and resale within the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and has been during all the time herein mentioned in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery bread in commerce.

PAR. 4. Respondent corporation in the course and conduct of its business and in the course of such commerce is now and has been subsequent to June 19, 1936, engaged in manufacturing and processing bakery bread for distribution and sale, and in selling such product to customers who are competitively engaged with each other in the handling, offering for sale and sale of such bakery bread to consumers, and to others for resale to consumers, and the respondent corporation has contracted to pay, and has paid to one of its preferred customers, namely, the District Grocery Stores, Inc., of Washington, D. C., the sum of \$250 per month in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said District Grocery Stores, Inc., in connection with the handling, offering for sale and sale of said bakery bread. The respondent has made and makes such payments as compensation for advertising services and facilities in connection with the preferred customer's offering for sale bakery bread and with the general understanding and agreement that the District Grocery Stores, Inc., will advertise its bread in its weekly newspaper advertising and by handbills and bulletins. Respondent has not made payments of advertising allowance available on proportionally equal terms to any other customers who compete in the distribution of its bread.

PAR. 5. Such acts of respondent since June 19, 1936, in interstate commerce in the manner and form aforesaid in paying and contracting to pay valuable consideration to and for the benefit of one preferred customer for services and facilities furnished by and through such customer in connection with the handling, offering for sale and sale of its bakery bread without making such payments available on proportionally equal terms to all other competing customers is in violation of the provisions of Section 2 (d) of the Robinson-Patman Act.

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 the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on July 29, 1943, issued and thereafter served its complaint in this proceeding upon Holzbeierlein & Sons, Inc., a corporation, charging it with violation of the provisions of subsection (d) of Section 2 of said act, as amended. After the issuance of said complaint and the filing of respondent's answer, the Commission by

order entered herein granted respondent's motion for permission to file an amended answer admitting all material allegations of fact set forth in said complaint and that said acts constituted a violation of subsection (d) of Section 2 of said act. The respondent also waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, amended answer, and waiver of intervening procedure; 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. The respondent, Holzbeierlein & Sons, Inc., 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 1849 Seventh Street, Northwest, Washington, D. C.

PAR. 2. Respondent is now and has been since prior to June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery bread in the several States of the United States and in the District of Columbia, and causes said product to be shipped and transported from its place of business in the District of Columbia to the purchasers thereof who are located in the several States of the United States and in the District of Columbia. The respondent distributes its bakery bread under the name of "Bamby Bread." There is and has been at all times mentioned a continuous course of trade in commerce in the said product across State lines between respondent's bakery and warehouse and the purchasers of said product. Such product is sold and distributed for use and resale within the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and has been during all the time herein mentioned in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of processing, manufacturing, offering for sale, selling and distributing bakery bread in commerce.

PAR. 4. In the sale and distribution of its bread in commerce as aforesaid, respondent has been and is now selling such bread to customers who are competitively engaged with one another in the handling, offering for sale, and sale of such bakery bread to consumers, and to others for resale to consumers; and respondent has contracted to pay, and has paid to one of its preferred customers, namely, the District Grocery Stores, Inc., of Washington, D. C., the sum of \$250 per month in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by said District Grocery Stores, Inc., in connection with the handling, offering for sale, and sale of said bakery bread. The respondent has made and makes such payments as compensation for advertising services and facilities in connection with the preferred customer's offering for sale bakery bread, and with the general understanding and agreement that the District Grocery Stores, Inc., will advertise its bread in its weekly newspaper advertising and by handbills and bulletins. Dur-

ing the times mentioned in the complaint herein, respondent made no payments of advertising allowances available on proportionally equal terms to any other customers who compete in the distribution of its bread.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the respondent, Holzbeierlein & Sons, Inc., a corporation, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended, by contracting for the payment of and paying, since June 19, 1936, \$250 per month in consideration of and as compensation for advertising services and facilities contracted to be furnished and furnished by District Grocery Stores, Inc., in connection with the handling, offering for sale, and sale of respondent's bakery bread, without making such payments for advertising services and facilities available on proportionally equal terms to other customers who compete with District Grocery Stores, Inc., in the distribution of respondent's bread.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondent's answer, amended answer and waiver of intervening procedure, and the Commission having made its findings as to the facts and its conclusion that respondent Holzbeierlein & Sons, Inc., has violated and is violating the provisions of subsection (d) of Section 2 of "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 approved June 19, 1936 (the Robinson-Patman Act).

It is ordered, That the respondent, Holzbeierlein & Sons, Inc., a corporation, its officers, representatives, agents and employees, in or in connection with the sale and distribution in commerce, as "commerce" is defined in the aforesaid Clayton Act, of "Bamby Bread" or any other bakery products, do forthwith cease and desist from:

1. Paying or contracting to pay anything of value to or for the benefit of District Grocery Stores, Inc., for advertising services or facilities furnished by such customer, unless such payment or consideration is available to all other competing customers on proportionally equal terms.

2. Paying or contracting to pay anything of value to or for the benefit of any customer for services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of respondent's said bakery products, unless such payment or consideration is available to all other competing customers on proportionally equal terms.

It is further ordered, That 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 is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
CARADINE HAT 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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5151. Complaint, Apr. 15, 1944—Decision, Aug. 16, 1944

Where a corporation engaged directly and through its subsidiaries in the importation and manufacture and competitive interstate sale and distribution of various types, styles and grades of hats to jobbers, retail chain stores, independent retailers, and retailers affiliated with buying organizations;

Selling its said products by its salesmen, who solicited all retailer customers individually at their respective places of business, where it also delivered their orders, and treating all without distinction other than billing the buying organizations for the purchases of members or affiliates, while billing the non-numbers or non-affiliates directly—

Discriminated in price between different purchasers of its said hats of like grade and quality through granting and allowing larger discounts and in some instances lower net prices to favored customers, generally members or affiliates of such buying organizations, than to certain of their competitors, through treating the purchases of such members or affiliates as those of a single customer, and granting to each the preferred net prices, discounts and other allowances which it had determined were applicable to a single purchaser who purchased such an amount;

Effects of which discriminations in price might be substantially to lessen competition in the sale and distribution of products concerned in the respective lines of commerce in which it and its customers were engaged, and to injure, destroy or prevent competition with it and with its customers who received the benefits of such discriminatory prices:

Held, That such discriminations in price by it between different purchasers of hats of like grade and quality in interstate commerce, under the facts and circumstances set forth, were in violation of the provisions of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Greensfelder & Hemker, of St. Louis, Mo., for respondent.

COMPLAINT

Pursuant to the provisions 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 an act approved June 19, 1936, entitled "An Act to amend Section 2 of the 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, Section 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that Caradine Hat Company, a corporation, is vi-