

IN THE MATTER OF
MORTON SALT COMPANY

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

Docket 4319. Complaint, Sept. 18, 1940—Decision, Apr. 14, 1945

Where a corporation engaged in the production of salt and in the competitive interstate sale and distribution thereof from its various plants or warehouses to wholesalers or jobbers for resale to the retail trade; to large retail purchasers such as cooperative and corporate chain stores; and to consumers purchasing in large quantities for use in their manufacturing processes, such as meat packers, tanners and many other industries—

- (a) Discriminated in price between different purchasers buying its Blue Label, plain and iodized table salt, of like grade and quality, by selling its products to some of its customers at lower prices than it sold said products of like grade and quality to other of its customers who were competitively engaged therein in the sale of such product within the United States, through selling its said Blue Label Salt to wholesalers and retailers at the delivered price of \$1.60 per case of 24 packages when delivery was made in less than carload lots while concurrently selling said salt to other wholesaler and retailer competitors at a delivered price of \$1.50 per case when delivery was made in carload lots;
- (b) Discriminated in price, as aforesaid, through its 5000 case discount by permitting certain organizations of wholesalers and retailers—the separate wholesale and retail units of which were engaged in competition in the same trade areas with other wholesalers and retailers respectively, who did not receive said 5000 case discount, and no one of whom purchased a sufficient quantity in a twelve-month consecutive period to qualify therefor—to combine the purchases of their said units in order so to do, and thereby receive the benefit of the 10¢ per case rebated by it from its \$1.50 carload price on such annual aggregate purchases to those thus favored;
- (c) Discriminated in price, as aforesaid, through its 50,000 or more case discount, under which four retail chain store organizations, with branches and stores in various cities—no one of which purchased a sufficient amount to qualify therefor, and which were in competition with other retail customer purchasers who did not receive such rebate but purchased said salt from it at car-load price at \$1.50 or the 5000 case quantity discount—were permitted to combine the purchases of all stores and branches, and thereby enjoy such discount, under which purchasers whose purchases aggregated said amount in a twelve-month consecutive period, became entitled to a discount of 15¢ per case on such purchases; and such retail chain grocers in many cases were permitted thereby to sell said Blue Label salt to the consuming public at prices lower than those at which wholesalers could reasonably sell the same to retail customers;
- (d) Discriminated in price, as aforesaid, in connection with the sale and distribution of its table salt other than Blue Label salt, sold at list price plus freight or transportation charges from the plant nearest the customer or the plant serving the area in which the customer was located, and from which delivery was customarily made, through its “unit discount”—amounting to about 5% of the list or plant price and extended to wholesalers and retailers who were in competition in same trade area with other wholesalers and retailers who did not receive the same—under

which one unit was allowed to a customer purchasing in carload lots, and an additional unit to those purchasing in amounts equal to or in excess of \$50,000 during a consecutive twelve-month period, and including, for the purpose of such calculation, purchasers' purchases of Blue Label salt;

- (e) Discriminated in price through certain special, long continued allowances, designated by it as "competitive adjustments" but not shown as made in good faith to meet an equally low price of a competitor, between different purchasers of like grade and quality through such typical discounts to certain customers as a special allowance of $7\frac{1}{2}\text{¢}$ per case from the carload price of \$1.50 on its Blue Label salt, extended to a Louisiana wholesale grocer engaged in the operation of 22 units or branches in competition with other wholesalers who did not receive said special discount, and through the allowance of an additional unit discount on table salt other than Blue Label, to certain affiliated companies, purchases of no one of which amounted to \$50,000 worth of salt during any consecutive twelve month period to entitle it thereto;

With the result that—

1. Discounts allowed by it to some of its wholesaler customers on said staple—sold on a lower margin of profit than other commodities and in which a difference of 5¢ per case might result in the loss of a sale to a customer of not only the salt but other commodities as well—enabled such wholesalers to offer its table salt to retailers at prices equal to those paid by competing wholesalers or at prices less than those at which competing wholesalers could reasonably sell said salt to the retailer customers;

2. Customers who received the benefit of its said discriminatory discounts, prices, rebates and allowances had a substantial advantage in selling its salt in competition with other customers who did not receive the benefit thereof or were obliged to pay its full price;

3. Wholesalers who paid its full price or were denied the discounts or rebates allowed said favored customers, in order to compete therewith, had either to sell at competitive prices and in so doing reduce their possible profits by the amount of the discriminations against them, or attempt to sell at higher prices than those which the favored customers charged, with the result of inability to secure business and a reduction in the volume of their sales;

4. Customers paying the highest prices were discriminated against with respect to all other customers, while those paying the lowest price were given the benefit of the discriminations as against other customers; and the medium-sized wholesaler grocer was discriminated against with respect to his larger competitors and given the benefit of the discrimination as against his smaller competitors; and

5. The discriminations in price based upon the 50,000 or more case discount of Blue Label salt allowed to certain of the large retail chain stores constituted a discrimination not only against the smaller or medium size chain stores that could not purchase in such quantities from it, but also a discrimination against the small retailer who was in competition with such large chain stores and compelled to purchase said Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume purchasers, and such wholesalers' retailer customers were thereby forced to pay prices which prohibited competition in prices between such small retailers and the large retail chain stores;

Effect of which discriminations in prices, might be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price was engaged, and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices, discounts, rebates and allowances and those to whom they were denied:

Complaint

40 F. T. C.

Held, That such discriminations in price by it, under the circumstances set forth, constituted violations of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

As respects the justification of certain price differences, in connection with the sale or delivery of respondent's table salt to its customers, as hereinabove indicated, challenged under the provisions of subsection 2(a) of the Clayton Act as amended by the Robinson-Patman Act, and, in this connection, certain testimony and evidence offered by respondent in an attempt to justify its price differentials to various customers, which testimony was stricken, on motion, by the trial examiner as being based upon estimates, hypotheses and mere guesses and as arbitrarily including items of distribution the correctness or applicability of which was doubtful: The Commission nevertheless considered the testimony so stricken, as well as other matters in the record, and was of the opinion, and so found, that respondent's price differences, including the rebates, allowances and discounts hereinabove mentioned, had not been shown to be justified by reason of differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which respondent's table salt was sold or delivered to its various customers.

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

Mr. John T. Haslett for the Commission.

Stearns & McBride, of Chicago, Ill., 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, Sec. 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondent hereinafter described is violating and has been violating the provisions of said Clayton Act as amended hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morton Salt Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business at 208 West Washington Street, Chicago, Ill.

PAR. 2. Respondent corporation is now and has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing salt in all parts of the United States. The respondent is one of the largest producers and distributors of salt in the United States and occupies a dominating position in said industry. Respondent sells its products to wholesalers, retailers, corporate chains, voluntary chains. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sale causes such products to be shipped and transported from the places of origin of the shipment to the purchasers thereof who are located in States of the United States and in the District of Columbia other than the State of origin of the shipment,

and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across state lines between respondent's plants or factories and the purchasers of such products. Said products are sold and distributed for use, consumption and resale within the various 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 during the time herein mentioned has been in substantial competition with other corporations, individuals, partnerships and firms engaged in the business of selling and distributing salt in commerce between and among the various States of the United States and the District of Columbia.

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 such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the following practices and policy pursued by the respondent, to wit:

1. A discount amounting to approximately five percent of the list price is allowed to all customers who purchase a carload of salt.

2. In addition to the carload discount hereinbefore referred to in paragraph 1 hereof, a five percent discount is allowed to customers whose purchases of salt during a twelve consecutive month period are equal to or in excess of fifty thousand dollars.

3. To customers who purchase five thousand or more cases consisting of twenty-four packages to a case during a twelve consecutive month period of "free running" table salt and "iodized" salt, a discount of 10¢ per case is granted, and to customers who purchase fifty thousand or more cases of the above type salt, a discount of 15¢ per case is granted. Said discount is not in addition to, but in lieu of the discounts referred to in paragraphs 1 and 2 hereinbefore mentioned.

The discount referred to in paragraph 2 heretofore mentioned is allowed to customers of the respondent who do not purchase from the respondent fifty thousand dollars worth of salt during a twelve consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total fifty thousand dollars during said given period of time. In the industry this type of selling is known as "split business," that is, basing the price upon the requirements of a customer and not upon the actual quantity purchased from the respondent.

In addition to the discriminations effected by the aforementioned discounts respondent discriminates in price between different purchasers of its products, and such price discriminations result from respondent's selling said salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of said customer provided such total quantity or volume amounts to the required minimums during the twelve consecutive month period as set forth in paragraphs 2 and 3 hereinbefore mentioned and not upon the quantity or volume delivered by the respondent to the respective branches or outlets of such individual customer.

In the industry this type of selling is known as "combine selling," that is, basing the price upon the total quantity delivered to all the separate

branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer.

PAR. 5. The effect of the discriminations in price generally and specifically mentioned in paragraph 4 herein has been and may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and has been and 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 in which said favored customers and their competitors are engaged in business.

PAR. 6. The foregoing acts and practices of said respondent are violations 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, MODIFIED 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 an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint upon the respondent, Morton Salt Company, a corporation, charging it with violating the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having considered the matter, made and issued its findings as to the facts and order to cease and desist on July 28, 1944. Thereafter, the respondent filed its petition for review of the order to cease and desist in the United States Circuit Court of Appeals for the Seventh Circuit. Subsequent thereto, by stipulation between the Federal Trade Commission and the respondent by their attorneys, said cause was remanded by the Circuit Court of Appeals to the Federal Trade Commission for the purpose of permitting the Commission to reconsider and modify its findings as to the facts and conclusion and its order to cease and desist issued July 28, 1944; and the Commission, having reconsidered the matter and the record herein, makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Morton Salt Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 310 South Michigan Avenue, Chicago, Ill. In addition to its main office, said respondent also maintains branch offices and warehouses in various of the larger cities throughout the United States and also maintains plants for processing and manufacturing salt at Port Huron, Mich.; Manistee, Mich.; Hutchinson, Kans.; Kanopolis, Kans.; Grand Saline, Tex.; Saltair, Utah; and Newark, Calif.

PAR. 2. Since prior to June 19, 1936, respondent has been engaged in the production and manufacture of various kinds and grades of salt and in the sale and distribution of such products in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes its products, when sold, to be transported from its various plants or warehouses to the purchasers thereof located in States other than the State in which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various 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 during the times herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of selling and distributing salt in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The various types of salt processed, manufactured, and sold by the respondent may be divided into four basic classifications: granulated salt, produced from brine and evaporated in vacuum pans; grainer's salt, produced from brine and processed through open-pan evaporation; rock salt, which is mined; and solar salt, which is produced from solar evaporation in open ponds. Table salt may come from all four of these sources.

The principal brand of table salt processed and sold by the respondent is Morton's Free Running Salt, plain and iodized. This brand is the finest grade sold by the respondent and is processed from the granulated or vacuum-pan type of salt. This brand is sold in a round blue package that contains 26 ounces of salt and is generally known as "Blue Label" salt. When sold by the respondent its Blue Label salt is packed twenty-four packages to a case or carton.

Respondent sells its various grades of salt to three classes of customers: (1) wholesalers or jobbers, who in turn resell to the retail trade; (2) retailers who purchase in large quantities, such as cooperative and corporate chain stores; and (3) consumers who purchase in large quantities for use in their manufacturing processes, such as meat packers, tanners, and many other industries. Table salt is the only type of salt involved in this proceeding.

PAR. 5. In the course and conduct of its business since June 19, 1936, in connection with its sale and distribution of its Blue Label plain and iodized salt, the respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who

are competitively engaged with the former in the sale of such products within the United States. Among the general practices pursued by the respondent in discriminating in price are the following:

1. Respondent has discriminated in price by selling its Blue Label salt to wholesalers and retailers at a delivered price of \$1.60 per case of 24 packages when delivery was made in less-than-carload lots, while at the same time it sold said Blue Label salt to other wholesalers and retailers at a delivered price of \$1.50 per case when delivery was made in carload lots. There were wholesalers and retailers who received the \$1.50 per-case price and wholesalers and retailers who received the \$1.60-per-case price who were in competition each with the other in the same trade areas.

2. Respondent has also discriminated in price in favor of both wholesalers and retailers who purchased 5,000 or more cases of its Blue Label salt in any consecutive 12-month period by granting a rebate to such purchasers of 10 cents per case from the \$1.50-per-case carload price, which rebates were remitted by the respondent to such purchasers in quarterly, semiannual, or other stated periods. Such rebates were referred to, and described by, the respondent as its "5,000-case discount." At the time such rebates were granted, there were other wholesaler or retailer customers of the respondent who were paying the less-than-carload price of \$1.60 per case or the carload price of \$1.50 per case who were in competition with such rebate or 5,000-case-discount customers in the same trade area.

In granting rebates on the purchase of 5,000 or more cases of its Blue Label salt, respondent permitted certain organizations to combine their purchases in order to qualify for the so-called 5,000-case discount; for example, respondent permitted the Thomas & Howard companies, a group of separate corporations, all wholesale grocers, located in various cities in North and South Carolina, to combine their purchases to qualify for said so-called 5,000-case discount on respondent's Blue Label salt. No individual Thomas & Howard Company purchased 5,000 cases of Blue Label salt, but, based upon the combined purchases of all the companies, the respondent remitted a rebate of 10 cents per case to the Thomas & Howard Company at Columbia, South Carolina, for distribution to other Thomas & Howard companies in proportion to their purchases.

In like manner respondent permitted the C. D. Kenny Company to combine the purchases of all its branch stores to qualify for the so-called 5,000-case discount on Blue Label salt. No individual branch store of C. D. Kenny Company purchased 5,000 cases of Blue Label salt, but based upon the combined purchases of all its branch stores the respondent allowed a rebate of 10 cents per case, which it remitted to the C. D. Kenny Company at Baltimore for distribution to its various branches.

The respondent also permitted the National Retailer-Owned Grocers, Inc., to combine the purchases of its members to qualify for the so-called 5,000-case discount on Blue Label salt. This organization acts as purchasing agent for its membership of approximately 18,917 retail stores, located in 42 States of the United States. These members in turn own about 116 wholesale warehouses, which act as wholesalers to such members. No individual wholesale warehouse or retail grocer purchased 5,000 cases of Blue Label salt from respondent, but, based upon combined purchases of all member stores, the respondent allowed a rebate of 10 cents per case, which it remitted to the principal office of the National Retailer-Owned Grocers, Inc., for distribution to its members.

At the time these rebates were granted, there were other wholesalers in competition with Thomas & Howard companies and C. D. Kenny Company in the same trade area, and other retailers in competition with the member stores of the National Retailer-Owned Grocers, Inc., in the same trade areas, who did not receive such rebates.

3. Respondent has also discriminated in price in favor of customers who purchased 50,000 or more cases of its Blue Label salt in any consecutive 12-month period by granting a rebate to such purchasers of 15 cents per case from the \$1.50-per-case carload price. This rebate was not in addition to the rebate allowed to the purchasers of 5,000-case quantities but was made in lieu thereof. The giving of this rebate by the respondent was limited to four customers, whose purchases were sufficient to qualify for this rebate. These were American Stores Company of Philadelphia, Pennsylvania; National Tea Company of Chicago, Illinois; Safeway Stores, Inc., of Oakland, California; and Great Atlantic & Pacific Tea Company of New York. These customers were all retail chain stores with branches and stores located in various cities throughout the United States. No branch or retail store purchased a sufficient quantity of respondent's Blue Label salt to qualify for said rebate, but, instead, the granting thereof was based upon the combined purchases of all stores and branches. Such rebate in many cases permitted such retail chain groceries to sell respondent's Blue Label salt to the consuming public at prices less than those at which wholesalers could reasonably sell said salt to their retail customers. There were other retailers in competition with the above-named retailer customers who purchased Blue Label salt from the respondent and who did not receive such rebate but who, instead, purchased said salt from the respondent at the carload price of \$1.50 or at the 5,000-case quantity discount.

PAR. 6. In the course and conduct of its business since June 19, 1936, in connection with its sale and distribution of table salt other than Blue Label salt, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with the former in the sale of such products within the United States. Salt sold by respondent other than Blue Label salt was not sold on a delivered-price basis, as was the custom with the Blue Label salt. Instead, such salt was sold at list price plus freight or transportation charges from the plant nearest the customer or from the plant serving the area in which the customer was located and from which delivery was customarily made. On the sale of such salt other than Blue Label the respondent also maintains a schedule of discounts known as the "unit discount." One unit amounts to approximately 5 percent of the list or plant price. One unit, or approximately 5 percent of list price, is allowed to a customer who purchases in car load lots. To those customers who purchase table salt during a consecutive 12-month period in amounts equal to, or in excess of, \$50,000, the respondent allows a so-called additional unit discount amounting to approximately 5 percent of the list price. While this discount does not apply to respondent's Blue Label salt, the amount of Blue Label salt purchased during a 12-month period is included in arriving at the total purchase of \$50,000. There were wholesalers and retailers not receiving such unit discounts who were in competition in the same trade area with wholesalers and retailers who received the unit dis-

count on carload shipments and the additional unit discount based upon total purchases of \$50,000.

PAR. 7. Separate and apart from the practices hereinabove described, the respondent has also discriminated in price between different purchasers of salt of like grade and quality by means of special allowances or discounts to certain customers. For example, the respondent has, for several years, made to the Consolidated Companies, Inc., of Plaquemine, Louisiana, a special allowance of $7\frac{1}{2}$ cents per case from the carload price of \$1.50 on its Blue Label salt. Consolidated Companies, Inc., is engaged in the wholesale grocery business and operates 22 units or branches throughout the State of Louisiana in competition with other wholesale grocers in Louisiana who purchase Blue Label salt from the respondent but who do not receive the special discount of $7\frac{1}{2}$ cents per case allowed by the respondent to Consolidated Companies, Inc.

An additional example is the allowance by the respondent of an additional unit discount on table salt other than Blue Label to the Thomas & Howard companies, although said Thomas & Howard companies do not purchase \$50,000 worth of salt during any consecutive 12-month period to entitle them to the additional unit discount.

The respondent refers to these and other special allowances as "competitive adjustments" and contends that they were arrived at to meet competition. Based upon the record in this case the Commission finds that the respondent has not shown the existence of facts which might indicate or prove that these discriminations in price were made in good faith to meet an equally low price of a competitor. The evidence submitted by the respondent is too vague and indefinite to show that the long-continued discriminations herein described were made in good faith to meet an equally low price of a competitor.

PAR. 8. The Commission finds that the price differences allowed by the respondent in the sale of its Blue Label salt, including price differentials on carload and less-than-carload lots and on purchases in 5,000- and 50,000-case quantities, as well as unit discounts allowed on carload lots and \$50,000 purchases of salt other than Blue Label, constituted discriminations in price between purchasers of commodities of like grade and quality.

Salt is a staple commodity with a medium turnover and is generally sold by wholesalers to their retail customers on a lower margin of profit than that received on other commodities. Consequently, the price at which the wholesaler offers his table salt is usually controlling, and a difference of five cents per case may result in the loss of a sale to a customer, not only of the salt involved but of other commodities as well, the order for which might be placed with the salt purchase.

In some instances the discounts allowed by the respondent to some of its wholesaler customers have enabled such wholesalers to offer respondent's table salt to retail dealers at prices equal to prices paid by competing wholesalers or at prices less than competing wholesalers could reasonably sell said salt to the retailer customers.

The Commission further finds that customers of the respondent who receive the benefit of the various discriminatory prices, discounts, rebates, and allowances granted by the respondent have a substantial advantage in selling respondent's salt in competition with other customers of the respondent who do not receive the benefit of such discriminatory prices, discounts, rebates, and allowances or who are obliged to pay respondent's full price for said salt. In order to sell respondent's table salt in competition with customers of the respondent who receive the benefit of respondent's

ent's discriminations in price, wholesalers who pay respondent's full price or who are denied the discounts or rebates allowed such favored customers must either sell at competitive prices and in so doing reduce their possible profits by the amount of the discriminations against them, or attempt to sell at higher prices than those which the favored customers of respondent charge for the same product, with the result of inability to secure business and a reduction in the volume of their sales.

By respondent's method of selling and the use of the price differences hereinbefore described, customers paying the highest price are discriminated against with respect to all other customers, while the customers paying the lowest price are given the benefit of the discrimination as against other customers of the respondent. Furthermore, the medium-sized wholesale grocer is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors.

The discriminations in price based upon the purchase during any consecutive 12-month period of 50,000 or more cases of Blue Label salt allowed to certain of the large retail chain stores constitute a discrimination in price not only against the smaller or medium-sized chain stores that cannot purchase Blue Label salt in such quantities from the respondent, but also constitute a discrimination against the small retail dealer who is in competition with such large chain stores but who is compelled to purchase Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume purchasers. Respondent, by selling its Blue Label salt to such large retail chain stores at prices below those charged for the same salt when sold to wholesalers, forces retailer customers of such wholesalers to pay prices which prohibit competition in price between such small retailers and the large retail chain stores.

PAR. 9. The respondent, during the course of the hearings, offered some testimony and evidence in an attempt to justify its price differentials to various customers. The trial examiner sustained a motion to strike this testimony as being based upon estimates, hypotheses, and mere guesses and as arbitrarily including items of distribution the correctness or applicability of which was doubtful. The Commission has nevertheless considered the testimony so stricken, as well as other matters in the record, and is of the opinion, and so finds, that respondent's price differences, including the rebates, allowances, and discounts hereinabove mentioned, have not been shown to be justified by reason of differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which respondent's table salt is sold or delivered to its various customers.

PAR. 10. The Commission finds that the effect of the discriminations in price, including discounts, rebates, and allowances, generally and specifically described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices, discounts, rebates, and allowances and those to whom they are denied.

CONCLUSION

The aforesaid discriminations in price by the respondent, as herein found, constitute violations of subsection (a) of section 2 of an act of Con-

gress 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 an act of Congress approved June 19, 1936 (Robinson-Patman Act).

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having considered the matter, made and issued its findings as to the facts, conclusion, and order to cease and desist on July 28, 1944. Thereafter, said cause was remanded by the Circuit Court of Appeals for the further consideration of the Commission, and the Commission, having reconsidered the matter and the record herein, made and issued its modified findings as to the facts and its conclusion that respondent has violated the provisions of 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 act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondent, Morton Salt Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail dealers purchasing said salt when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered,

(a) By selling such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such wholesalers.

(b) By selling such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than five cents per case which do not tend to lessen, injure, or destroy competition among such retailers.

(c) By selling such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer.

For the purposes of comparison, the term "price" as used in this order takes into account discounts, rebates, allowances, and other terms and conditions of sale.

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.

Syllabus

IN THE MATTER OF
THE DR. D. A. WILLIAMS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4759. Complaint, May 7, 1942—Decision, Apr. 19, 1945*

Where a corporation engaged in the interstate sale and distribution of a medicinal preparation designated "The Williams Treatment" and intended for use in the treatment of various diseases and conditions; through statements in newspaper advertisements, circulars, pamphlets and other advertising media, directly or by implication—

- (a) Represented that rheumatism, neuritis, neuralgia, arthritis, constipation, sore muscles, stiff joints, bladder disorders, kidney disorders, tired feeling, acid stomach, itchy skin, susceptibility to colds, lack of energy, nervousness, biliousness, headaches, acid poisoning, stomach troubles, urinary disorders, lameness, stiffness and soreness in muscles and joints, aches and pains in various parts of the body, swellings, grouchiness, and irritability of temper are diseases caused by, or symptoms or conditions indicating, an excess uric acid condition of the body; that its preparation would correct and overcome such excess acid condition, and that it was therefore a cure or remedy or a competent and effective treatment for such diseases and conditions; and
- (b) Represented that its said preparation would promote better health, physical comfort, and happier life; that it was effective in preventing the development of, and in correcting the result of, too much uric acid; would chemically correct the condition of excess uric acid and physiologically promote the elimination of excess uric acid from the blood and tissues; would neutralize uric acid excess, correct the prime fundamental cause of predisposition to disease, and cure diseases already developed; would prevent the deposit of uric acid in the kidneys, joints, tissues, or muscles by promoting the excretion of uric acid more easily; overcome the consequences upon the blood and tissues of the irritant and poisonous influences of too much uric acid; enable the body to maintain a proper alkaline balance; overcome damage which might have been done in the body by too much uric acid; and would build up the strength of important organs, induce sound sleep, and lift the strain from frayed nerves;

The facts being that, as established by expert testimony, there is no relation between excess uric acid in the body and the diseases and conditions in question; its preparation was incapable of correcting or overcoming any excess uric acid condition which might exist in the body, was not a cure or remedy nor a competent or effective treatment for the various ailments and conditions set forth; and it was incapable of accomplishing the other results claimed for it, as above set forth;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to its preparation, and to cause it to purchase substantial quantities of the preparation as a result, whereby substantial trade was diverted unfairly to it from its competitors:

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

In a proceeding before the Commission, in which the complaint raised numerous issues with respect to advertising claims made by the respondent, in connection with