

Syllabus

IN THE MATTER OF

WALTER H. JOHNSON CANDY CO.

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

Docket 4677. Complaint, Apr. 17, 1942¹—Decision, June 8, 1948

Where a corporation engaged in the manufacture of confectionery products, including principally candy bars sold in wrappers under the trade names Heavyweight Champ, Big Bonus, and Power House, and in the competitive interstate sale and distribution of said products, generally in 24- and 100-count packages, to confectionery jobbers and distributors of candy vending machines;

In selling large quantities of its said products to candy vending machine distributors, who competed with each other in obtaining locations for their machines in such places as moving-picture theaters, restaurants, news stands, filling stations, garages, and industrial plants and in distributing said products, and who included the A company, owner of about 100,000 such machines, whereby in 1 year more than 200,000,000 candy bars (of which about 1,000,000 were made by said corporation) were sold—

- (a) Discriminated in price between different purchasers by selling said products, and particularly candy bars, at the same time at different prices to competitive vending machine distributors located in the same trade areas through such practices as sale of its Heavyweight Champ bars in 100-count packages to vending machine distributors at a delivered price of \$2.50, while contemporaneously selling the same products to similar customers in the same trade area at delivered prices of \$2.40 and \$2.25, and to said A company, at \$2.03 (subject, in case of all, to 2 percent cash discount; and
- (b) Discriminated in price between different purchasers of its said products, including candy counter retailers, through such practice as selling its Heavyweight Champ candy bars in 24-count packages at a delivered price of 64 cents to jobbers supplying vending machine operators and other retailers in the same trade areas in which the lessees of the said A company operated their vending machines, and selling said bars to said A company in 100-count packages at a delivered price of \$2.03;

Effect of which discriminations in price might be to substantially lessen competition in the line of commerce concerned, and to injure, destroy, and prevent competition between purchasers who received the benefit of said discriminatory prices and those to whom they were denied:

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

Mr. Austin H. Forkner for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

¹ Amended.

Complaint

44 F. T. C.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Walter H. Johnson Candy Company, a corporation, hereinafter more particularly designated and described as respondent, since June 19, 1936, has violated and is now violating the provisions of 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, popularly known as the Clayton Act, as amended by Act approved June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act (U. S. C., Title 15, Section 13 as amended), hereby issues its amended complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Walter H. Johnson Candy Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 341 West Superior Street in the city of Chicago, in said State.

Said respondent at all times hereinafter mentioned has been engaged in the business of manufacturing, selling, and distributing confectionery products, including principally candy bars sold in wrappers under the trade names, "Heavyweight Champ," "Big Bonus," and "Power House." Said products are generally sold in 24-count packages and 100-count packages.

PAR. 2. Respondent, in the course and conduct of its said business, sells its said confectionery products to confectionery jobbers and distributors of candy vending machines located in the various states of the United States and causes substantial quantities of said products, when sold, to be shipped and transported from its place of business in the State of Illinois across state lines to the respective purchasers thereof located in states other than the State of Illinois and in the District of Columbia. Said respondent sells and delivers substantial quantities of its said products to one of its customers, namely, Automatic Canteen Company of America, located in the city of Chicago, engaged in the business of leasing candy vending machines to various distributors, and the sale on a jobbing basis of various candy products to such distributors, which said products are intended to be, and are, thereafter distributed by said customer throughout the several states of the United States to the consuming public through candy vending machines leased by the said customer. In many instances respondent has delivered said confectionery products directly to agencies or distributors and lessees of said Automatic Canteen Company of America located in various states of the United States.

Respondent, in the course and conduct of its said business since June 19, 1936, has been and now is engaged in competition with other persons, firms, and corporations who manufacture, sell, and distribute similar confectionery products to jobbers and owners and operators of candy vending machines located in the various States of the United States and the District of Columbia.

PAR. 3. Said respondent, in the course and conduct of its said business, sells large quantities of its confectionery products to persons, firms, and corporations engaged in the distribution of said products to the consuming public through the medium of candy-vending machines located in such places as moving-picture theaters, restaurants, newsstands, filling stations, garages, and industrial plants. One such customer, the said Automatic Canteen Co. of America, owns approximately 100,000 such automatic vending machines through which in 1 year more than 200,000,000 candy bars were vended, of which number approximately 1,000,000 bars were manufactured by respondent. Candy vending machine distributors compete actively with each other in efforts to obtain locations for their machines and in the distribution of the confectionery products sold them by the respondent and other manufacturers.

PAR. 4. Respondent, in the course and conduct of its said business since June 19, 1936, has discriminated in price between different purchasers of confectionery products by selling said products, particularly candy bars, of like grade, quality, and weight, at the same time at different prices to competitive candy vending machine distributors located in the same trade areas. One or more of the purchases involved in such discrimination were in commerce, and such commodities were sold for use, consumption, or resale within the United States or the District of Columbia. For instance, respondent usually sold Heavyweight Champ candy bars in 100-count packages to candy vending machine distributors in the same trade area at a delivered price of \$2.50, 2 percent discount for cash. At the same time, respondent has sold such products to other similar customers in the same trade area at delivered prices of \$2.40 and \$2.25 with the same discount for cash, and to one such customer, the said Automatic Canteen Co. of America, respondent sold such products at a delivered price of \$2.03 with the same discount for cash.

PAR. 5. In or near many of the places in which customers or lessees of customers of the respondent operate candy-vending machines dispensing confectionery products manufactured and sold by respondent as aforesaid are also located candy counters operated by retailers at which similar confectionery products sold by respondent through

Findings

44 F. T. C.

candy jobbers as aforesaid, are sold to the consuming trade by competitors of the said candy vending machine operators. Respondent, in the course and conduct of its said business since June 19, 1936, at the same time it was selling confectionery products to candy vending machine distributors mentioned in paragraph 4 hereof, has discriminated in price between different purchasers of said products by selling in the same trade areas confectionery products of like grade, quality, and weight at a higher delivered price to said jobbers supplying confectionery retailers and candy vending machine operators competitive with some of said candy vending machine operators, lessees of candy machine distributors. For instance, said respondent has sold Heavy-weight Champ candy bars in 24-count packages at a delivered price of 64 cents, 2 percent discount for cash, to jobbers supplying candy vending machine operators and other confectionery retailers located in the same trade areas as the lessees of the said Automatic Canteen Co. of America operated their vending machines and dispensed Heavy-weight Champ bars which were sold by respondent to the said Automatic Canteen Co. of America in 100-count packages at a delivered price of \$2.03, 2 percent discount for cash.

PAR. 6. The effect of the said discriminations in price alleged in paragraphs 4 and 5 hereof has been and may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent is engaged as hereinbefore set forth in paragraph 1, and to injure or prevent competition between respondent and its said competitors and between certain of respondent's customers who receive the benefit of such discriminations and their competitors.

Said discriminations in price between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form hereinbefore set forth are in violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended by the Robinson-Patman Act, more fully described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by 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 April 17, 1942, issued and subsequently served its amended complaint in this proceeding upon the respondent Walter

H. Johnson Candy Co., a corporation, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act. After the issuance of said amended complaint and the filing of respondent's answer thereto, respondent on motion withdrew said answer and filed a substitute answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said amended complaint and substitute answer filed by the respondent, and the Commission, having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walter H. Johnson Candy Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 341 West Superior Street, in the city of Chicago, in said State.

Said respondent at all times herein mentioned has been engaged in the business of manufacturing, selling, and distributing confectionery products, including principally candy bars sold in wrappers under the trade names Heavyweight Champ, Big Bonus, and Power House. Said products are generally sold in 24- and 100-count packages.

PAR. 2. Respondent, in the course and conduct of its business, sells its said confectionery products to confectionery jobbers and distributors of candy-vending machines located in the various States of the United States and causes substantial quantities of said products, when sold, to be shipped and transported from its place of business in the State of Illinois across State lines to the respective purchasers thereof located in States other than the State of Illinois and in the District of Columbia. Said respondent sells and delivers substantial quantities of its said products to one of its customers; namely, Automatic Canteen Co. of America, located in the city of Chicago, engaged in the business of leasing candy-vending machines to various distributors, and the sale on a jobbing basis of various candy products to such distributors, which said products are intended to be, and are, thereafter distributed by said customer throughout the several States of the United States to the consuming public through candy-vending

Findings

44 F. T. C.

machines leased by the said customer. In many instances respondent has delivered said confectionery products directly to agencies or distributors and lessees of said Automatic Canteen Co. of America located in various States of the United States.

Respondent, in the course and conduct of its said business since June 19, 1936, has been and now is engaged in competition with other persons, firms and corporations who manufacture, sell and distribute similar confectionery products to jobbers and owners and operators of candy vending machines located in the various States of the United States and the District of Columbia.

PAR. 3. Said respondent, in the course and conduct of its said business, sells large quantities of its confectionery products to persons, firms and corporations engaged in the distribution of said products to the consuming public through the medium of candy vending machines located in such places as moving-picture theaters, restaurants, newsstands, filling stations, garages, and industrial plants. One such customer, the said Automatic Canteen Co. of America, owns approximately 10,000 such automatic vending machines through which in 1 year more than 200,000,000 candy bars were vended, of which number approximately 1,000,000 bars were manufactured by respondent. Candy vending machine distributors compete actively with each other in efforts to obtain locations for their machines and in the distribution of the confectionery products sold them by the respondent and other manufacturers.

PAR. 4. Respondent, in the course and conduct of its said business since June 19, 1936, has discriminated in price between different purchasers of confectionery products by selling said products, particularly candy bars, of like grade, quality, and weight, at the same time at different prices to competitive candy vending machine distributors located in the same trade areas. One or more of the purchases involved in such discriminations were in commerce, and such commodities were sold for use, consumption, or resale within the United States or the District of Columbia. For instance, respondent usually sold Heavy-weight Champ candy bars in 100-count packages to candy vending machine distributors in the same trade area at a delivered price of \$2.50, 2 percent discount for cash. At the same time, respondent has sold such products to other similar customers in the same trade area at delivered prices of \$2.40 and \$2.25 with the same discount for cash, and to one such customer, the said Automatic Canteen Co. of America, respondent sold such products at a delivered price of \$2.03 with the same discount for cash.

PAR. 5. In or near many of the places in which customers or lessees of customers of the respondent operate candy vending machines dispensing confectionery products manufactured and sold by respondent as aforesaid are also located candy counters operated by retailers at which similar confectionery products sold by respondent through candy jobbers as aforesaid, are sold to the consuming trade by competitors of said candy vending machine operators. Respondent, in the course and conduct of its said business since June 19, 1936, at the same time it was selling confectionery products to candy vending machine distributors mentioned in paragraph 4 hereof, has discriminated in price between different purchasers of said products by selling in the same trade areas confectionery products of like grade, quality, and weight at a higher delivered price to said jobbers supplying confectionery retailers and candy vending machine operators competitive with some of said candy vending machine operators, lessees of candy machine distributors. For instance, said respondent has sold Heavyweight Champ candy bars in 24-count packages at a delivered price of 64 cents, 2 percent discount for cash, to jobbers supplying candy vending machine operators and other confectionery retailers located in the same trade areas as the lessees of the said Automatic Canteen Co. of America operated their vending machines and dispensed Heavyweight Champ bars which were sold by respondent to the said Automatic Canteen Co. of America in 100-count packages at a delivered price of \$2.03, 2 percent discount for cash.

PAR. 6. The Commission finds that the effect of the discriminations in price 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 and those to whom they are denied.

CONCLUSION

The aforesaid discriminations in price by the respondent, as herein found, constitute violation 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 an act of Congress approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the sub-

stitute answer of the respondent, in which answer respondent admits all material allegations of fact set forth in said complaint and waives all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclusion that said 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 an act of Congress approved June 19, 1936 (Robinson-Patman Act):

It is ordered, That the respondent, Walter H. Johnson Candy Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of candy bars or other candy products, 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 purchasers when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which said products are sold or delivered:

1. By selling such products to some vending-machine operators at prices differing from the prices charged other vending-machine operators who in fact compete in the sale and distribution of such products in the same trade areas.

2. By selling such products to some vending-machine distributors at prices differing from the prices charged jobbers whose customers compete with the lessees of said vending-machine distributors in the same trade areas.

It is further ordered, That the respondent, Walter H. Johnson Candy Co., a corporation, 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

PURE CARBONIC, INC., AIR REDUCTION CO., INC., LIQUID CARBONIC CORP., MATHIESON ALKALI WORKS, INC., AND MICHIGAN ALKALI CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUB-SEC. (a) OF SEC. 2 OF AN ACT APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5143. Complaint, Mar. 17, 1945¹—Decision, June 17, 1948

Where four corporations, namely, (1), P, engaged in the purchase and competitive interstate sale and distribution of (a) liquid carbon dioxide or gas, at wholesale and at retail, sold, mostly without delivery charge, in loaned, 20- or 50-pound, high pressure steel cylinders, to soft drink manufacturers, drug stores, and retail purveyors of carbonated beverages throughout the United States (and since 1933 the largest such producer and distributor therein); and of (b) solid carbon dioxide, or dry ice, sold in wholesale and retail quantities primarily to ice cream and frozen food manufacturers and others, engaged in the production and distribution of perishable foods; (2), L, the only other company in the carbon dioxide business, with Nation-wide distribution facilities for both cylinder gas and dry ice; (3), M, engaged in the production of gas and dry ice as byproducts of other chemical preparations, and in the sale of its entire output of gas to P, and of its dry ice to six concerns including P and L, and in the sale for an 8-year period prior thereto of its entire output other than gas through an exclusive agent who acted with its knowledge and acquiescence in acts set-out as those of said M during period involved; makers, since 1939, of about 73 percent of the total United States production of carbonic gas, and responsible, since 1933, for three-fourths to four-fifths of the annual sales of dry ice therein; and (4), A, owner of all the stock of P; in competition with one another and with others except as below set forth—

Pursuant to agreement, understanding, conspiracy, and planned common course of action, over a period of nearly 15 years, created in themselves a substantial degree of monopoly and control of the manufacture, sale, and distribution of both liquid and solid carbon dioxide by the concurrent execution of the acts, practices, and policies below set out, the success of each of which was almost wholly dependent upon the success of the others, and could have been successfully carried out only through the cooperation of all; and,

Where said P (or A) and L, as a part of said program and undertaking, etc.—

(1) Purchased outright, and in some instances, by agreement divided among themselves, the assets, business equipment, productive capacity, and distribution facilities of about 31 competitors engaged in the sale and distribution of dry ice and gas; and, in the case of a portion of such purchases, made it a condition that the officers or owners of the competing firms concerned would not thereafter engage in the production, sale, or distribution of said products for a specified length of time in a designated area;

¹ Amended.