

Complaint

IN THE MATTER OF

NATIONAL TEA COMPANY AND NATIONAL TEA
COMPANY—STANDARD GROCERY DIVISION

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

Docket 5648. Complaint, Apr. 7, 1949—Decision, May 15, 1950

Where a corporation engaged in the operation of some 700 retail grocery stores in Chicago, and 48 stores in Indianapolis, and in purchasing in interstate commerce, as thus engaged, from various sellers numerous food and grocery items for resale, in competition with others similarly engaged—

Adopted and pursued purchasing policies and practices which were knowingly designed and intended to induce, and which did induce, from a number of sellers, discriminatory prices favorable to it in its purchases of the aforesaid merchandise, and which included, as illustrative, its advertised "Multi-Million Dollar Profit-Sharing Plan," pursuant to which (and following prior arrangements solicited from a number of its sellers), it issued books of coupons of a designated cash value when used and applied to the purchase of the merchandise depicted thereon, which it redeemed and delivered to the respective sellers whose merchandise had been concerned in said transactions, so that the latter might reimburse it through paying to it the coupons' designated cash value;

With the result that it purchased the food and grocery items involved therein at prices below the sellers' customary prices, and was enabled to and did resell said merchandise below the retail prices usually obtained by it and by its competitors;

Effect of which discriminations in price, so induced and received by it, was and might be to substantially lessen competition in the line of commerce in which said sellers and its competitors were engaged, and to injure, destroy, or prevent competition with said sellers and with it in the resale of food and grocery items and similar merchandise of like grade and quality:

Held, That such acts and practices, under the circumstances set forth, constituted violations of Sec. 2 (f) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Eldon P. Schrup for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, of Chicago, Ill., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936

Complaint

46 F. T. C.

(U. S. C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. National Tea Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 1000 Crosby Street, Chicago, Ill.

National Tea Co.-Standard Grocery Division is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 675 East Washington Street, Indianapolis, Ind. Said Indiana corporation is a wholly owned subsidiary of National Tea Co. the aforesaid Illinois corporation.

National Tea Co. and National Tea Co.-Standard Grocery Division are engaged in the business of the purchase of food and grocery items for resale, and in such connection conduct a chain grocery business. Respondent National Tea Co., the Illinois corporation, operates some 700 retail grocery stores in various of the central States of the United States, including 236 such stores in the city of Chicago, Ill. Respondent National Tea Co.-Standard Grocery Division, the Indiana corporation, operates 48 such stores in the city of Indianapolis, Ind.

PAR. 2. Respondents National Tea Co. and National Tea Co.-Standard Grocery Division, in the course and conduct of their aforesaid businesses, have purchased and now purchase in interstate commerce from sellers or from sellers engaged in interstate commerce, numerous food and grocery items for resale and in such purchase and resale transactions, said respondent corporations are now and have been in active and substantial competition with other corporations, partnerships, firms and individuals similarly so located and engaged in the business of such purchase for resale of the same or similar merchandise of like grade and quality from the same or competitive sellers.

The aforesaid merchandise sellers are variously located in the several States of the United States and the aforesaid merchandise buyers and said sellers cause said merchandise when purchased as aforesaid to be shipped and transported among and between the several States of the United States from the respective locations of the various sellers to the respective locations of the various buyers of the same for resale.

PAR. 3. Respondents National Tea Co. and National Tea Co.-Standard Grocery Division, since June 1936, have adopted, followed and pursued purchasing policies and practices which were knowingly designed and intended to induce and did induce from such of the aforesaid merchandise sellers as acceded, discriminatory purchase prices favorable to said respondent corporations in their purchases of the afore-described merchandise for resale.

Said respondents, in furtherance of said policies and practices, during the months of October, November, and December 1948, advertised certain offers to the purchasing public illustrative of which was what respondents termed a "Multi-Million Dollar Profit-Sharing Plan" to prospective and potential customers whereunder respondents offered to give away and redeem during designated times in connection with merchandise purchases made in respondents' retail stores located in Chicago, Ill., Indianapolis, Ind., and variously in the States of Illinois, Iowa, Michigan, and Indiana approximately 500,000 coupon books containing some 25,000,000 coupons of the aggregate total cash value of \$2,700,000.

Respondents National Tea Co. and National Tea Co., Standard Grocery Division, following prior arrangements and agreements solicited from and made with the aforesaid acceding sellers in connection with such resale of said merchandise purchased as hereinbefore described, thereupon issued said coupon books containing said coupons each of a designated cash value when used and applied to the purchase of the merchandise depicted thereon. Following such merchandise resale and pursuant to said prior arrangements and agreements, each acceding seller reimbursed and paid to respondents National Tea Co. and National Tea Co., Standard Grocery Division, the designated cash value appearing on such coupons as were redeemed by said respondents in connection with such resale of the particular seller's merchandise.

PAR. 4. Respondents National Tea Co. and National Tea Co., Standard Grocery Division, through the adoption and use of said coupons in the aforesaid merchandise purchase and resale transactions at said times as afore described, were enabled to and did both purchase and resell the merchandise therein concerned, at a selling price below the sellers customary and normal selling price to said respondents and respondents' said competitors for the same or similar merchandise of like grade and quality, and at a retail price below the customary and normal retail price usually obtained by respondents and respondents' said competitors for such merchandise.

The effect of said discriminations in price as hereinbefore set forth has been and may be to substantially lessen competition in the lines of commerce in which the aforesaid sellers and the respondents and respondents' said competitors are engaged, and to injure, destroy, or prevent competition with the aforesaid sellers and the respondents in the resale of food, grocery items, and similar merchandise of like grade and quality purchased from the sellers hereinbefore described.

PAR. 5. The foregoing acts and practices of said respondents are in violation of section 2 (f) of the said act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An

Findings

46 F. T. C.

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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission on April 7, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with having violated the provisions of subsection (f) of section 2 of said Clayton Act, as amended. The answer of the respondent, National Tea Co., was filed on May 31, 1949. On July 8, 1949, the respondent, National Tea Co., filed with the Commission a motion for permission to withdraw the aforesaid answer and in lieu thereof to file a substitute answer in which said respondent, solely for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and hearings as to said facts, but reserved to itself the right to file a brief and present oral argument as to what order, if any, should be issued on the facts admitted. By order issued September 30, 1949, the Commission granted said motion and directed the respondent within 20 days after service upon it of said order to file its brief. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer (respondent, National Tea Co., not having filed a brief within the time fixed in the Commission's order of September 30, 1949, and not having requested oral argument); 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, National Tea Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Said respondent maintains its office and principal place of business at 1000 Crosby Street, in the city of Chicago, State of Illinois.

The complaint in this proceeding alleged also that the National Tea Co., Standard Grocery Division, is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Indiana, with its office and principal place of business located at 675 East Washington Street, in the city of Indianapolis, State of Indiana. According to the original answer of the respondent National Tea Co., however, the National Tea Co., Standard Grocery Division, has no separate corporate existence from the National Tea Co., the Illinois corporation, and is merely a division of said corporation. On the basis of this information, the Commission in using the term "respondent" hereinafter refers solely to the National Tea Co., the Illinois corporation.

PAR. 2. The respondent, National Tea Co., is engaged in the retail grocery business. Said respondent operates a chain of some 700 retail grocery stores in a number of the Central States of the United States, including 236 such stores in the city of Chicago, State of Illinois, and 48 such stores in the city of Indianapolis, State of Indiana.

PAR. 3. In the course and conduct of its business, the respondent purchases in interstate commerce from various sellers numerous food and grocery items for resale. In such purchase transactions, and in the subsequent resale of the merchandise, the respondent is now and at all times mentioned herein has been in active and substantial competition with other corporations and with partnerships, firms, and individuals similarly engaged in the purchase and resale of the same or similar merchandise of like grade and quality from the same or competitive sellers. The sellers of said merchandise are variously located in the several States of the United States, and their merchandise, when purchased by the respondent, and by other purchasers, is shipped and transported among and between the several States of the United States from the respective locations of said sellers to the respective locations of the respondent and other purchasers.

PAR. 4. The respondent, National Tea Co., since June 19, 1936, has adopted, followed, and pursued purchasing policies and practices which were knowingly designed and intended to induce, and which have induced, from a number of the aforesaid sellers, discriminatory purchase prices favorable to said respondent in its purchases of the aforesaid food and other merchandise.

The respondent, pursuant to and in furtherance of said policies and practices, during the months of October, November, and December of 1948, advertised to the purchasing public certain offers, illustrative of which was one termed by the respondent a "Multi-Million Dollar Profit-Sharing Plan." Under this plan, the respondent offered to give out and to redeem during certain designated times, in connection with purchases made in its retail stores located in Chicago, Ill., Indianapolis, Ind., and in various other cities in the States of Illinois, Iowa, Michigan, and Indiana, approximately 25 million coupons, con-

Order

46 F. T. C.

tained in approximately 500,000 coupon books, having an aggregate total cash value of \$2,700,000. Following prior arrangements and agreements solicited from and made with a number of sellers from whom the respondent purchased its food and grocery items for resale, the respondent thereupon issued the coupon books described in said advertisements, each of which coupon therein was of a designated cash value when used and applied to the purchase of the merchandise depicted thereon. Upon the redemption of said coupons by the respondent, they were in turn delivered to the respective sellers in connection with the resale of whose merchandise said coupons were issued, and each of such sellers participating in the plan thereupon reimbursed and paid to the respondent the designated cash value appearing on such coupons.

PAR. 5. The respondent, National Tea Co., through the adoption and use of the aforesaid plan in connection with its purchase transactions was enabled to and did purchase the food and grocery items involved therein at prices below the sellers' customary and normal prices to the respondent and its competitors for the same or similar merchandise of like grade and quality. Said respondent at the same time was enabled to and did resell said merchandise below the customary and normal retail prices usually obtained by it and by its competitors for such merchandise.

PAR. 6. The effect of the discriminations in price, induced and received by the respondent, as aforesaid, was and may be to substantially lessen competition in the lines of commerce in which the sellers of the merchandise involved and the respondent and its competitors are engaged, and to injure, destroy, or prevent competition with said sellers and with the respondent in the resale of food and grocery items and similar merchandise of like grade and quality.

CONCLUSION

The acts and practices of the respondent, as herein found, constituted violations of subsection (f) of section 2 of the 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 (15 U. S. C., sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, National Tea Co., in which answer said respondent

admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated subsection (f) 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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13):

It is ordered, That the respondent, National Tea Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the purchase of food products or other items of merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Knowingly inducing or receiving from any manufacturer or seller, by or through the use of any profit-sharing plan, or otherwise, any discount, rebate or other allowance higher than, or any price lower than, that allowed by such manufacturer or seller to competitors of said respondent; provided, however, that the foregoing shall not be construed to preclude the respondent from defending any alleged violation of this order by showing that any higher discount, rebate or other allowance, or any lower price, knowingly induced or received by it, was one available to said respondent's competitors who were customers of the manufacturer or seller upon openly announced prices of such manufacturer or seller.

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to National Tea Co., Standard Grocery Division.

It is further ordered, That the respondent, National Tea Co., shall, within 60 days after service upon it of a copy 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

46 F. T. C.

IN THE MATTER OF

WALTER M. JAKWAY DOING BUSINESS AS VOGUE
PRODUCTSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5537. Complaint, Apr. 21, 1948—Decision, May 23, 1950*

Where an individual engaged in selling and distributing a preparation designed as "Tuffenail"; in advertisements in periodicals and in circulars, leaflets, pamphlets, and display cards, directly and by implication—

- (a) Represented that said preparation was an effective aid for brittle, splitting, breaking, and chipping nails, would toughen the nails and prevent such conditions;
- (b) Represented that application thereof to the nails constituted a competent and effective treatment for "onychosis," would stimulate nail growth, help nails to grow stronger and keep them strong; and
- (c) Represented that said Tuffenail would penetrate the skin into the flesh of the nail bed and prevent sluggishness of the lymphatic glands;

The facts being that while said product would temporarily soften the cuticle around the nails, it had no other therapeutic property; it would have no effect on onychosis nor on the lymphatic glands, none of which are located at the matrix of the nails; and splitting and brittle nails are not due to lack of stimulation or to sluggish action of said glands at the matrix;

With tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that said advertisements were true and thereby induce its purchase of said preparation:

Held, That such acts and practices, 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. Abner E. Lipscomb*, trial examiner.

Mr. R. P. Bellinger for the Commission.

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 Walter M. Jakway, an individual doing business as Vogue Products, hereinafter referred to as respondent, has violated the provisions of 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 Walter M. Jakway is an individual trading and doing business under the name Vogue Products, with his