

Complaint

IN THE MATTER OF
KENTUCKY CHEMICAL INDUSTRIES, INC.

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

Docket 5971. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation which was engaged in the manufacture and competitive interstate sale and distribution, primarily to retail feed dealers in the eastern and southeastern United States, of animal proteins known as "K-C Brand" meat and bone scraps and digester tankage, and of its "Proviso" brand complete feeds and concentrates;

In selling its said feed products through two so-called volume rebate plans known as "Dealer Patronage Dividend Contracts", pursuant to which it paid patronage dividends, discounts, rebates or refunds, to the less than 50% of its dealers who qualified—

- (a) Discriminated in price between different purchasers in the "Delmarva" peninsula principally, through the use of a sliding scale, under which discounts ranged from 50¢ per ton for monthly purchases of from 60 to 120 tons, to \$1.50 per ton for 480 tons or over; and
- (b) Similarly discriminated in price between different purchasers in other areas through the use of a plan pursuant to which the dealer received points on all of its feed purchases during a twelve-month period, with higher point values for the more expensive purchases, and under which the dealer received discounts of from 5¢ to 20¢ per point, depending upon the points accumulated, ranging from a minimum of 300 to 10,000 and over;

Effect of which discriminations in price might be substantially to lessen competition or tend to create a monopoly in respondent in the line of commerce in which it was engaged, and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between customers who received the benefits of such discriminations which it granted, and competing dealer purchasers who did not:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act as amended, by the Robinson-Patman Act.

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

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, for respondent.

COMPLAINT

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 Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having

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reason to believe that the respondent named in the caption hereof, and hereinafter more particularly described, has violated and is now violating the provisions of section 2 (a) of said Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Kentucky Chemical Industries, Inc., hereinafter referred to as "respondent Kentucky Industries," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located on Estee Avenue, Cincinnati 32, Ohio.

PAR. 2. The respondent Kentucky Industries, since 1937, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal feed products of various types, including complete feeds and concentrates. Said animal feed products, manufactured, sold and distributed by respondent, are known as "Provico" brand feed. Said feeds are sold by respondent primarily to retail feed dealers in the sales area comprising the Eastern and Southeastern United States, from the Northeast part thereof to Florida; respondent does not sell its products to wholesalers or distributors.

During the calendar year 1948, respondent's gross sales of feed were 87,466 tons, valued at \$9,035,127.74; in 1949, the gross sales were 144,933 tons, valued at \$10,585,373.58.

Respondent's manufacturing plant is located at Cincinnati, Ohio, and it has warehouses located at Seaford, Delaware, and Gainesville, Georgia.

Said respondent Kentucky Industries sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States and in the District of Columbia. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manufacturing plant and warehouses in the several States in which they are located, across State lines, to the purchasers thereof, located in the District of Columbia and in the various States of the United States other than where such shipments originate. Respondent maintains, and has maintained, during all the times mentioned herein a course of trade in said products, in commerce, among and between 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, since its organization in 1937, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products, and which sell and seek to sell and distribute said products in commerce

between and among the several States of the United States to retail feed dealers, except insofar as such competition has been, or may be, affected by the acts and practices hereinafter alleged.

PAR. 4. In the course and conduct of its business, as aforesaid, since in or about June, 1947, respondent has been, and is now, discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases, which were and are involved in such discriminations, were, and are, in commerce, and the animal feed products so involved, were, and are, sold for use, consumption or resale within the United States.

PAR. 5. Among the aforesaid price discriminations are those which were and are accomplished by so-called volume rebate plans which were instituted by respondent in or about June, 1947. Since then, these plans, both known as "Dealer Patronage Dividend Contracts," have been utilized continuously, and are still utilized by respondent in the sale and distribution of its animal feeds and concentrates.

Under such plans, respondent's dealers are paid discounts, refunds or rebates on their total purchases of such feeds and concentrates for the period beginning December 1 and ending November 30 of each succeeding year.

One type of "Dealer Patronage Dividend Contract" which has been, and is still used by respondents, principally in the "Delmarva" area (this area is a peninsula composed of the State of Delaware and several counties of the States of Maryland and Virginia, and which is located between the Chesapeake Bay and the Atlantic Ocean), provides for the calculation of the discount, refund or rebate on the basis of the total number of tons of "Provico" feeds and concentrates purchased during the period. There is a sliding scale where the discount, refund or rebate per ton is proportionally higher according to the number of tons of said feeds purchased during the period. Any dealer who purchases a minimum of 60 tons of said feeds during the aforesaid period is the recipient of the minimum discount, refund or rebate at the rate of 50 cents per ton. Should a dealer's total purchases not aggregate this required minimum during any specific month of the aforesaid period, such dealer receives no discount, refund or rebate on his purchases. As respondent's dealers purchase larger quantities of said feeds, they obtain larger discounts, refunds or rebates which are computed at a higher rate per ton, according to the

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following schedule of total purchases during any particular month of such period:

	<i>Per ton</i>
60 tons-----	\$0.50
120 tons-----	.75
210 tons-----	1.00
330 tons-----	1.25
480 tons-----	1.50

The discount, refund or rebate under this particular type of the respondent's Dealer Patronage Dividend is on a monthly basis and is not cumulative: for example, if a dealer buys 210 tons of feed in any one month, his patronage dividend, discount, refund, or rebate for that month will be \$1.00 per ton, but should he buy only 60 tons the succeeding month, his dividend, discount, refund or rebate will be 50 cents per ton on the feed purchased during that month; should a dealer buy in excess of 480 tons in any one month during the period, there is no carry over of excess tonnage into the succeeding month, but such a dealer will receive a patronage dividend, discount, refund or rebate of \$1.50 per ton on the total number of tons purchased during the month, including those tons in excess of 480 tons. This is explained to all the respondent's dealers, who, when they begin purchasing respondent's feeds, enter into this so-called "Dealer Patronage Dividend Contract" with the respondent; as aforesaid, only those dealers who are located in the aforementioned "Delmarva" area for the most part, enter into this particular type of contract.

The other type of volume rebate plan, which is likewise called by the respondent "Dealer Patronage Dividend Contract" and which has been utilized by respondent since its inception in or about June, 1947, in all of the areas in which respondent sells its feeds other than that of "Delmarva," provides for the assignment of certain point values per ton for the various feeds and concentrates which respondent manufactures; the purchaser receives a certain number of points on all of said feeds purchased during the aforesaid period, with such feeds having different point values, the more expensive being assigned the higher point values. Any dealer who accumulates a minimum of 300 points during the aforesaid annual period from December 1 to November 30 is the recipient of the minimum discount, refund or rebate of 5 cents per point on his purchases from the respondent during this period. If a dealer fails to accumulate the minimum, he receives no discount, refund or rebate on his purchases. Respondent's dealers who earn a greater number of total points during the period are accredited with and paid discounts, refunds or rebates which are computed at a higher rate per point based on the following schedule:

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Points per year :	Value (cents)	Points per year :	Value (cents)
300-499-----	5	4,000-4,499-----	13
500-999-----	6	4,500-4,999-----	15
1,000-1,499-----	7	5,000-5,999-----	16
1,500-1,999-----	8	6,000-6,999-----	17
2,000-2,499-----	9	7,000-7,999-----	18
2,500-2,999-----	10	8,000-8,999-----	19
3,000-3,499-----	11	10,000 and over-----	20
3,500-3,999-----	12		

Under this type of patronage dividend, the points are cumulative, and as soon as a dealer purchases from respondent sufficient feed to accumulate 300 points therefor, he begins to "earn dividends" on his purchases, and the total points acquired during the aforesaid period form the basis for the computation of his discount, refund or rebate on his purchases. When a dealer begins purchasing his feeds from the respondent, and is not located in the "Delmarva" area, he enters into another type of "Dealer Patronage Dividend Contract," which sets forth the points allowed for the different types of feeds manufactured and sold by the respondent, as well as the aforesaid schedule of discounts, refunds or rebates based upon the total number of points per year.

The patronage dividends, discounts, rebates or refunds under both the aforesaid plans, or "Dealer Patronage Dividend Contracts," are paid in cash after December 1 of each specific year to the various dealers who qualify, without the necessity of application or any other action on the part of the dealer.

During the year of 1948, the total dealers' patronage dividend, discount, refund or rebate paid was \$61,838.27; during the year of 1949, it was over \$80,000; these amounts were distributed to less than 50% of respondent's dealers, with the balance not purchasing sufficient of respondent's animal feeds during these years to receive benefits under the applicable plan.

Respondent does not use any system of sub-dealers, nor does it sell to any chain purchasers or to any dealers purchasing on a group or pool basis. Respondent does not require any of its dealers to sell respondent's brand of animal feeds to the exclusion of competitive brands of feed produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products do purchase and sell one or more competitive brands of said products.

PAR. 6. The effect of the discriminations in price, as alleged herein and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to

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injure, destroy and prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy and prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

PAR. 7. The foregoing described plans, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

CONSENT SETTLEMENT¹

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), the Federal Trade Commission, on the 24th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all of the jurisdictional allegations set forth in the complaint.

¹ The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance", follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on August 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Kentucky Chemical Industries, Inc., a corporation, shall within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting, or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH. 1. Respondent Kentucky Chemical Industries, Inc., hereinafter referred to as "respondent Kentucky Industries," is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its general offices and principal place of business located on Este Avenue, Cincinnati 32, Ohio.

PAR. 2. The respondent, Kentucky Industries, since 1937, has been engaged, and is now engaged, in the manufacture, sale and distribution of animal proteins known as K-C Brand meat and bone scraps and digester tankage and since August 1942 has also been engaged, and is now engaged, in the manufacture and sale of complete feeds and concentrates which are manufactured, sold and distributed by respondent as "Provico" Brand feed. Said feeds are sold by respondent primarily to retail feed dealers in the sales area comprising the Eastern and Southeastern United States, from the Northeast part thereof to Florida; respondent does not sell its products to wholesalers or distributors.

During the calendar year 1948, respondent's gross sales of feed were 87,466 tons, valued at \$9,035,127.74; in 1949, the gross sales were 144,933 tons, valued at \$10,585,373.58.

Respondent's manufacturing plant is located at Cincinnati, Ohio. Said respondent Kentucky Industries sells and distributes in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, said animal feed products to retail dealers located in various States of the United States and in the

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District of Columbia. Respondent causes said animal feed products, when sold, to be transported and shipped from its respective manufacturing plant and warehouses in the several States in which they are located, across State lines, to the purchasers thereof, located in the District of Columbia and in the various States of the United States other than where such shipments originate. Respondent maintains, and has maintained, during all the times mentioned herein, a course of trade in said products, in commerce, among and between 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, since its organization in 1937, has been engaged in substantial competition with other persons, partnerships, firms and corporations which likewise manufacture animal feed products, and which sell and seek to sell and distribute said products in commerce between and among the several States of the United States to retail feed dealers, except insofar as such competition may have been affected by the acts and practices hereinafter stated.

PAR. 4. In the course and conduct of its business, as aforesaid, since in or about June, 1947, respondent has been (until the time mentioned in Paragraph 5 hereof) discriminating in price between different purchasers of its animal feed products of like grade and quality by selling such products to some of its purchasers at higher prices than it sells these said products of like grade and quality to others of its purchasers who are in competition one with the other in the sale of said products within the United States.

Some of the purchases which were involved in such discriminations were in commerce, and the animal feed products so involved were sold for use, consumption or resale within the United States.

PAR. 5. The aforesaid price discriminations were accomplished by so-called volume rebate plans which were instituted by respondent in or about June, 1947. Since then these plans, both known as "Dealer Patronage Dividend Contracts," were utilized continuously by respondent in the sale and distribution of its animal feeds and concentrates until December 1, 1951, which was subsequent to the investigation by the Federal Trade Commission.

The following is a description of the plans as then used by respondent:

(1) Under such plans, respondent's dealers are paid discounts, refunds, or rebates, on their total purchases of such feeds and concentrates for the period beginning December 1 and ending November 30 of each succeeding year.

(2) One type of "Dealer Patronage Dividend Contract," which has been used by respondents, principally in the "Delmarva" area

(this area is a peninsula composed of the State of Delaware and several counties of the States of Maryland and Virginia and which is located between the Chesapeake Bay and the Atlantic Ocean), provides for the calculation of the discount, refund or rebate on the basis of the total number of tons of "Provico" feeds and concentrates purchased during the period. There is a sliding scale whereby the discount, refund or rebate per ton is proportionally higher according to the number of tons of said feeds purchased during the period. Any dealer who purchases a minimum of 60 tons of said feeds during any specific month of the aforesaid period is the recipient of the minimum discount, refund or rebate at the rate of 50 cents per ton. Should a dealer's total purchases not aggregate this required minimum during any specific month of the aforesaid period, such dealer receives no discount, refund or rebate on his purchases. As respondent's dealers purchase larger quantities of said feeds, they obtain larger discounts, refunds or rebates which are computed at a higher rate per ton, according to the following schedule of total purchases during any particular month of such period:

	<i>Per ton</i>
60 tons.....	\$0. 50
120 tons.....	. 75
210 tons.....	1. 00
330 tons.....	1. 25
480 tons.....	1. 50

(3) The discount, refund or rebate under this particular type of respondent's Dealer Patronage Dividend is on a monthly basis and is not cumulative; for example, if a dealer buys 210 tons of feed in any one month, his patronage dividend, discount, refund or rebate for that month, will be \$1.00 per ton, but should he buy only 60 tons the succeeding month, his dividend, discount, refund or rebate will be 50 cents per ton on the feed purchased during the month; should a dealer buy in excess of 480 tons in any one month during the period, there is no carryover of excess tonnage into the succeeding month, but such a dealer will receive a patronage dividend, discount, refund or rebate of \$1.50 per ton on the total number of tons purchased during the month, including those tons in excess of 480 tons. This is explained to all the respondent's dealers, who, when they begin purchasing respondent's feeds, enter into this so-called "Dealer Patronage Dividend Contract" with the respondent; as aforesaid, only those dealers who are located in the aforementioned "Delmarva" area for the most part, enter into this particular type of contract.

(4) The other type of volume rebate plan, which is likewise called by the respondent "Dealer Patronage Dividend Contract," and which was utilized by respondent since its inception in or about June, 1947,

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until December 1, 1951, which was subsequent to the investigation by the Federal Trade Commission, in all of the areas in which respondent sells its feeds other than that of "Delmarva," provides for the assignment of certain point values per ton for the various feeds and concentrates which respondent manufactures; the purchaser receives a certain number of points on all of said feeds purchased during the aforesaid period, with such feeds having different point values, the more expensive being assigned the higher point values. Any dealer who accumulates a minimum of 300 points during the aforesaid annual period from December 1 to November 30 is the recipient of the minimum discount, refund or rebate of 5 cents per point on his purchases from the respondent during this period. If a dealer fails to accumulate the minimum points, he receives no discount, refund or rebate on his purchases. Respondent's dealers who earn a greater number of total points during the period are accredited with and paid discounts, refunds or rebates which are computed at a higher rate per point based on the following schedule:

Points per year:	Value (cents)	Points per year:	Value (cents)
300-499 -----	5	3,500-3,999 -----	12
500-999 -----	6	4,000-4,499 -----	13
1,000-1,499 -----	7	4,500-4,999 -----	15
1,500-1,999 -----	8	5,000-5,999 -----	16
2,000-2,499 -----	9	6,000-6,999 -----	17
2,500-2,999 -----	10	7,000-7,999 -----	18
3,000-3,499 -----	11	8,000-8,999 -----	19
		10,000 and over -----	20

(5) Under this type of patronage dividend, the points are cumulative, and as soon as a dealer purchases from respondent sufficient feed to accumulate 300 points therefor, he begins to "earn dividends" on his purchases, and the total points acquired during the aforesaid period form the basis for the computation of his discount, refund or rebate on his purchases. When a dealer began purchasing his feeds from the respondent, and was not located in the "Delmarva" area, he entered into the foregoing type of "Dealer Patronage Dividend Contract," which set forth the points allowed for the different types of feeds manufactured and sold by the respondent, as well as the aforesaid schedule of discounts, refunds or rebates based upon the total number of points per year.

(6) The patronage dividends, discounts, rebates or refunds under both the aforesaid plans, or "Dealer Patronage Dividend Contracts," were paid in cash after December 1 of each specific year to the various dealers who qualify without the necessity of application or any other action on the part of the dealer.

During the year 1948, the total dealers' patronage dividend, discount, refund or rebate paid was \$61,838.27; during the year of 1949,

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it was over \$80,000.00; these amounts were distributed to less than 50% of respondent's dealers, with the balance not purchasing sufficient of respondent's animal feeds during these years to receive benefits under the applicable plan.

Respondent does not use any system of sub-dealers, nor does it sell to any chain purchasers or to any dealers purchasing on a group or pool basis. Respondent does not require any of its dealers to sell respondent's brand of animal feeds to the exclusion of competitive brands of feed produced and sold by other manufacturers, and most of the dealers to whom respondent sells its animal feed products do purchase and sell one or more competitive brands of said products.

PAR. 6. The effect of the discriminations in price, as stated herein and of any part or fraction thereof, may be substantially to lessen competition or tend to create a monopoly in the respondent in the line of commerce in which it has been and is now engaged, and to injure, destroy and prevent competition between the respondent and other manufacturers and sellers of animal feed products, and in the line of commerce in which the customers of the respondent, their dealer purchasers, are engaged, may be to injure, destroy and prevent competition between those customers, who in purchasing respondent's products receive the benefits of such discriminations which respondent grants, as hereinbefore set forth, and those competing dealer purchasers from the respondent who do not receive such benefits.

COMMISSION'S CONCLUSION

The foregoing described plans, acts and practices of respondent are in violation of the provisions of subsection (a) of section 2 of the Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Kentucky Chemical Industries, Inc., a corporation, directly or indirectly, through any corporate or other device, through its officers, agents, representatives or employees, or by any other means or methods in the sale of animal feed products, including both concentrate and complete feeds, whether sold under the name of "Provico" or any other name or designation, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different competing purchasers of animal feed products, including both concentrate and complete feeds of like grade and quality, where the afore-

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said products are sold for use, consumption or resale within the United States, by employing in any manner, or by any means, any arrangement or plan, regardless of designation, whereby allowances, discounts, rebates, refunds, compensation or consideration of any nature or description are granted or paid in any manner to competing dealer purchasers of such products when such allowances, discounts, rebates, refunds, compensation or consideration are compiled or computed at varied or different rates or percentages dependent upon the quantity or amount of the products purchased.

KENTUCKY CHEMICAL INDUSTRIES, INC.,

By (S) R. W. MACGREGOR,

President.

MAY 22, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of August, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

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IN THE MATTER OF
UBIKO MILLING COMPANY

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

Docket 5972. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of animal feed products of various types, including both concentrate and complete feeds, under the trade name "Life Guard", which, during the year ending October 31, 1949, sold about 65,558 tons thereof, amounting to \$4,150,000 in gross sales;

In selling its said feed products, primarily to retail dealers, in the area composed of Southern Ohio, West Virginia, Virginia, Western Pennsylvania, New Jersey, Kentucky, Tennessee, the two Carolinas, Georgia and Florida, through its so-called "Dealer Profit Selling Plan", pursuant to which it paid discounts, refunds or rebates automatically to dealers who qualified thereunder and who had not become delinquent in their payments during the twelve month period applicable thereto—

Discriminated in price between different purchasers by selling to some at higher prices than it sold products of like grade and quality to others actively engaged in competition with one another in their resale, through the use of a sliding scale pursuant to which annual purchases of a minimum of fifty to one hundred tons entitled a dealer to a discount of 50¢ a ton, and larger purchases ranging up to 500 tons or more entitled him to larger discounts up to \$1.00 a ton;

Effect of which discriminations in price might be substantially to lessen competition or tend to create a monopoly in the line of commerce in which it was engaged and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between favored customers who received the benefits of such discriminations and competing dealer purchasers who did not receive such benefits:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

COMPLAINT

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 Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission,