

Decision

IN THE MATTER OF
PAGE DAIRY COMPANYDECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE
CLAYTON ACT, AS AMENDED

Docket 5974. Complaint, Mar. 27, 1952—Decision, Oct 30, 1953

Where an Ohio corporation engaged in the manufacture, processing, and distribution of fluid milk and dairy products and in the transportation and sale at wholesale of homogenized milk from its Ohio processing plant to various cities, towns, and trading areas in Indiana and in Michigan, in competition with other dairies, mostly locally owned, in each of said trading areas—

- (a) Discriminated in price between its Ohio purchasers and its Indiana and Michigan purchasers by charging the former higher prices for milk of like grade and quality than it charged its latter purchasers; and
- (b) Discriminated in price in the interstate sale of its homogenized milk among its purchasers located in Indiana and Michigan by charging some of such purchasers higher prices than it charged other purchasers located in said States for milk of like grade and quality, through charging one cent more for its quart cartons of its homogenized Vitamin D milk which was so labeled than it charged for such milk sold in quart cartons not so labeled:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William H. Smith, Mr. James I. Rooney, and Mr. James S. Kelaher for the Commission.

Shumaker, Loop & Kendrick and *Mr. Roland H. Rogers*, of Toledo, Ohio, for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 30, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions 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), the Federal Trade Commission on March 27, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Page Dairy Company, a corporation, charging it with violation of subsection (a) of Section 2 of that Act as amended. After the filing by respondent of its answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, the case in support of the complaint being rested at the conclusion of such hearings. Such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, respondent elected to introduce no testimony or other evidence in opposition to the allegations of the complaint. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony, and other evidence, and proposed findings as to the facts, conclusion, and order submitted jointly by counsel supporting the complaint and counsel for respondent (oral argument not having been requested); and the hearing examiner, having duly considered the matter, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Page Dairy Company, is a corporation organized existing, and doing business under any by virtue of the laws of the State of Ohio, with its principal office and place of business located at Wade and Knapp Street, Toledo, Ohio.

PAR. 2. Since the date of its incorporation in 1913, respondent has been engaged in the manufacture, processing, and distribution of fluid milk and dairy products. Respondent processes and sells regular and homogenized fluid milk. Its dollar volume of sales for the year 1950 was approximately \$9,000,000.00.

PAR. 3. During February of 1950, respondent began the transportation of homogenized milk from its processing plant in Toledo, Ohio, to various cities, towns, and trading areas located in the States of Indiana and Michigan, principally in Northeastern Indiana and Southeastern Michigan, which milk respondent sold and now sells at wholesale to grocery and other retail stores located in said cities, towns, and trading areas.

PAR. 4. In the course and conduct of its business respondent engaged in commerce, as "commerce" is defined in the Clayton Act, having shipped and transported homogenized milk from its plant located in the State of Ohio, to purchasers, to whom it sold at whole-

sale, located in the States of Indiana and Michigan, and more particularly to purchasers located in the cities, towns, and trading areas of Harlan, Georgetown, Orland, St. Joe, Angola, and Auburn in the State of Indiana, and in the cities, towns, and trading areas of Bronson, Coldwater, Hillsdale, North Adams, and Adrian, in the State of Michigan.

PAR. 5. For a considerable period of time prior to February of 1950, when respondent began the sale of homogenized milk in commerce in the cities, towns, and trading areas located in the States of Indiana and Michigan, as described in Paragraph Four, there were other dairies, mostly locally owned, selling regular and homogenized milk at wholesale in each of said cities, towns, and trading areas, and who, since February 1950, have been in competition in the sale of milk with respondent.

PAR. 6. In making sales of homogenized milk to its purchasers at wholesale in the State of Ohio, and in transporting and selling the same in commerce to purchasers located in the States of Indiana and Michigan, respondent has been and is discriminating in price between its purchasers located in the State of Ohio and those located in the States of Indiana and Michigan by charging its purchasers located in the State of Ohio higher prices for milk of like grade and quality than respondent charges its purchasers located in the States of Indiana and Michigan. Respondent is also discriminating in price in the interstate sale of homogenized milk among its purchasers located in the States of Indiana and Michigan by charging some of its purchasers located in said States higher prices than it charges other purchasers located in the said States, for milk of like grade and quality.

PAR. 7. During the period February 1950, to June 1, 1952, all homogenized fluid milk processed and sold by respondent contained Vitamin D. In some cases with respect to quart cartons, this fluid milk was packaged in cartons labeled "Vitamin D" and in other cases this milk was packaged in cartons from which such labeling was omitted. In those cartons labeled "Vitamin D" the milk was sold at a charge of 1¢ additional per quart over the price of the milk in the cartons which did not bear the label "Vitamin D." This was done despite the fact that the fluid milk in both types of cartons was identical. All fluid milk packaged in 2 qt. cartons was labeled "Vitamin D."

Some examples of respondent's wholesale prices for homogenized milk to its purchasers, and competitors' wholesale prices for regular and homogenized milk to such purchasers during the same period of time, are as follows:

Findings

50 F. T. C.

Place of sale	Respondent's prices			Competitor's prices					
	Homogenized vitamin D			Homogenized vitamin D			Creamline		
	Quart cartons	One half gallon cartons		Quart cartons	One half gallon cartons		Quart cartons	One half gallon cartons	
	Cents per qt.	Cents per ½ gal.	Cents per qt.	Cents per qt.	Cents per ½ gal.	Cents per qt.	Cents per qt.	Cents per ½ gal.	Cents per qt.
<i>Indiana</i>									
Harlan.....	15½	30	15	17½	-----	-----	16½	-----	-----
Georgetown.....	15½	30	15	17½	-----	-----	16½	-----	-----
Orland.....	17½	34	17	18½	-----	-----	17½	-----	-----
St. Joe.....	17½	34	17	17½	-----	-----	16½	-----	-----
Angola.....	17½	35	17½	18½	37	18½	17½	-----	-----
Auburn.....	16½	32	16	17½	35	17½	16½	-----	-----
<i>Michigan</i>									
Bronson.....	17½	34	17	18	-----	-----	18	-----	-----
Coldwater.....	17½	34	17	18½	34	17	17½	-----	-----
Hillsdale.....	17½	34	17	18½	34	17	17½	-----	-----
North Adams.....	-----	34	17	18½	34	17	17½	34	17
Adrian.....	17½	34	17	-----	-----	-----	17½	-----	-----

Thus respondent was selling homogenized Vitamin D milk in quart cartons not labeled "Vitamin D" at prices which were as much as 2¢ per quart less than competitors' prices for milk of like grade and quality; and was selling its homogenized Vitamin D milk in two quart containers at prices which were as much as 2½¢ per quart less than competitors' prices for homogenized Vitamin D milk, and as much as 1½¢ per quart less than competitors' prices for their regular creamline milk. In many of the areas where these differences in price prevailed, respondent's competitors did not distribute their milk in two quart containers.

In the sale of milk to the consuming public the gross margin of profit is very narrow. Therefore, any appreciable difference in price has the tendency to divert business from one seller to another. As the result of the pricing practices of respondent on the sale of homogenized milk some purchasers have either discontinued or curtailed their purchases of milk from respondent's competitors.

PAR. 8. Since June 1, 1952, respondent processes and sells both regular homogenized milk and homogenized milk containing Vitamin D, and charges 1¢ additional per quart for homogenized milk containing Vitamin D over the price for regular homogenized milk.

PAR. 9. The effect of such discrimination in price as stated herein may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy, or prevent competition with respondent.

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Order

CONCLUSION

The acts and practices of respondent as set forth herein are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER

It is ordered, That the respondent, Page Dairy Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of fluid milk in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price by selling said fluid milk of like grade and quality to any purchaser at prices lower than those granted other purchasers where respondent, in the sale of such product, is in competition with any other seller.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of October 30, 1953].

IN THE MATTER OF
VISIONADE VISOR COMPANY, INC., ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6046. Complaint, Sept. 22, 1952—Decision, Nov. 3, 1953

Where a corporation engaged in the manufacture and interstate sale and distribution of plastic sun visors for attachment and use on the inside of automobile windshields; through advertisements in periodicals of general circulation, circulars, and other advertising matter—

- (a) Represented, among other things, that its said visors would “fit your car,” were tailor made to fit individual model cars, and gave the eyes the same protection as fine sunglasses;

The facts being that while its “Safe-T-Zone” visors were precut to fit the contour of the upper edge of windshields of many automobiles, they required some trimming and cutting for exact fittings; another type, with which they furnished a pattern and cutting instructions, was not tailor made or precut to fit any windshield; and they did not shield the eyes like fine sunglasses; and

Where two individuals, officers of said company, and similarly engaged; in similarly advertising their “Filterzone” visors—

- (b) Falsely represented that their said products were optically correct and afforded clear, true visibility, and that they filtered out all infra-red rays;

When in fact they did not have the characteristics of fine sunglasses, were not optically correct, and, while they permitted true color visibility, and filtered out approximately 75%, they permitted the transmission of about 25% of the infra-red heat rays:

Held, That such acts and practices, under the circumstances set forth, were false, misleading, and deceptive, to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Golden & Golden, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission’s Rules of Practice, and as set forth in the Commission’s “Decision of the Commission and Order to File Report of Compliance”, dated November 3, 1953, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.