

Complaint

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IN THE MATTER OF
CROSS BAKING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF
THE CLAYTON ACT

Docket 6334. Complaint, Apr. 22, 1955—Decision, July 13, 1955

Consent order requiring a leading producer of bakery products, sold under the trade names "Holsum", "Bamby", "Hollywood", and others, with main office in Montpelier, Vt., to cease selling and contracting to sell, and fixing prices for, their products on the condition that purchasers not use or deal in bakery products of any competitor.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. William H. Smith and *Mr. Andrew C. Goodhope* for the Commission.

Mr. Robert H. Ryan, of Montpelier, Vt., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Cross Baking Company, Inc., a corporation, and G. Landale Edson, individually and as an officer of said corporation (hereinafter called respondents) have violated the provisions of Section 3 of the Clayton Act (15 U. S. C. A. Sec. 14), the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Cross Baking Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Vermont, having its principal office and place of business located at 101 Main Street, Montpelier, Vermont.

Respondent G. Landale Edson is an individual and is president of respondent Cross Baking Company, Inc. Respondent G. Landale Edson at all times hereinafter mentioned has controlled and directed the policies and practices of corporate respondent Cross Baking Company, Inc., including the methods, acts and practices mentioned herein.

PAR. 2. Respondents are now and for many years have been engaged in the manufacture, sale and distribution of a variety of bakery products, including various kinds of bread, rolls, cakes and pastries. Respondents sell their products under a number of trade names, including "Freshbake," "Sun-Spun," "Betsey Ross," "Holsum," "Bamby," "Hollywood" and "Duncan Hines." Respondents sell

their bakery products to chain store grocery organizations, food wholesalers and independent grocery stores. The wholesalers and chain store organizations and independent grocery stores to whom respondents sell their products are independent businesses which resell the products purchased from the respondents to consumers. Respondents are one of the leading producers of bakery products and are an important and substantial competitive factor in the area in which they produce and distribute their products. Total sales of all bakery products by respondents during the year 1952 were \$874,072.00.

PAR. 3. Respondents now sell and distribute, and for many years have been selling and distributing, their above described products to chain store organizations, wholesalers and independent grocery stores located throughout the States of New York, Vermont and New Hampshire, and respondents cause said products to be transported from their place of manufacture in the State of Vermont to purchasers thereof located in States other than the State of manufacture. Respondents also cause other of their above described products to be transported from places of manufacture in the State of New York across State lines to purchasers thereof located in the States of New Hampshire and Vermont. There is now and has been for many years a constant current of trade in commerce in respondents' said products between and among the various States of the United States.

PAR. 4. In the course and conduct of their business as herein described respondents have been for many years in substantial competition in the sale and distribution of bakery products in commerce between and among the various States of the United States with other corporations, persons, firms and partners, likewise engaged in the manufacture, sale and distribution of similar products.

PAR. 5. In the course and conduct of their business in commerce, above described, the respondents have made sales and contracts for sale of their bakery products and have fixed a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the purchaser or purchasers of said bakery products shall not use or deal in similar bakery products of a competitor or competitors of the respondent.

Among such sales and contracts of sale is that entered into between respondents and a large chain store organization, The Grand Union Company, whereby Grand Union Company has agreed to handle and sell respondents' bakery products exclusively in a large number of its retail stores and not handle any such bakery products of competitors of respondents. A similar arrangement has been entered into

between respondents and the buying agent of the Red and White Stores, also a large retail chain store organization.

PAR. 6. Respondents' sales of their bakery products pursuant to the conditions, agreements and understandings described in Paragraph Five hereof have been and are substantial. Competitors of respondents have been, and are now, unable to make sales of similar products to those sold by respondents to respondents' customers which they could have made but for the conditions, agreements and understandings described above in Paragraph Five. Customers of respondents who have entered into contracts of sale have been restricted and hampered in their businesses as a result of being unable to purchase similar bakery products from competitors of respondents.

PAR. 7. The effect of such sale and contracts for sale on such conditions, agreements or understandings may be to substantially lessen competition in a line of commerce in which respondents are engaged and in the line of commerce in which the customers and purchasers of respondents' products are engaged; and may be to tend to create a monopoly in respondents in the line of commerce in which the respondents have been and are now engaged.

PAR. 8. The aforesaid acts and practices of respondents constitute a violation of Section 3 of the Clayton Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 22, 1955, charging them with having violated Section 3 of the Clayton Act. After being duly served with said complaint, the respondents appeared by counsel and entered into a stipulation with counsel supporting the complaint, dated May 23, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation has been submitted to the above-named hearing examiner, heretofore duly designated by the Commission, for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice.

Respondents, pursuant to the aforesaid stipulation, have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that respondents expressly waive the filing of an answer herein, a hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of excep-

tions and oral argument before the Commission, and all further and other procedure to which the respondents may be entitled under the Clayton Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waive any and all right, power or privilege to challenge or contest the validity of said order. It was also stipulated and agreed that the aforesaid stipulation, together with the complaint herein, shall constitute the entire record; that the said complaint may be used in construing the terms of the order provided for in said stipulation; that said stipulation is subject to approval in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice; that the order issued herein shall have no force and effect unless and until it becomes the order of the Commission; and that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid stipulation for consent order, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted by the hearing examiner, who makes the following findings, for jurisdictional purposes, and order:

1. Respondent Cross Baking Company, Inc., is now and has been at all times mentioned in the complaint herein a corporation organized under and existing by the virtue of the laws of the State of Vermont with its office and principal place of business located at 101 Main Street, in the City of Montpelier, State of Vermont. Respondent G. Landale Edson is an individual and is now and has been at all times mentioned in the complaint president of corporate respondent Cross Baking Company.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the Clayton Act.

ORDER

It is ordered, That the respondents Cross Baking Company, Inc., a corporation, and G. Landale Edson, individually and as an officer of said corporation, their agents, representatives and employers, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of bakery products in com-

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merce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products, or fixing a price charged therefor, or discount from, or debate upon, such price on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the bakery products or other similar or related products supplied by any competitor or competitors of the respondents;

2. Enforcing or continuing in operation or effect any condition, agreement or understanding in or in connection with any contract of sale of any such products or fixing a price charged therefor or discount from, or rebate upon such price which condition, agreement or understanding is to the effect that the purchasers of the said products shall not use or deal in bakery products or other similar or related products supplied by any competitor or competitors of respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Sec. 3.21 of the Commissioner's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of July, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF
PLATINOID METALS COMPANY, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 6292. Complaint, Feb. 18, 1955—Decision, July 14, 1955*

Order requiring a manufacturer in New York City to cease representing falsely that its finger rings contained platinum through stamping the rings with the word "Platinoid".

Mr. Terral A. Jordan for the Commission.

Mr. Abraham M. Jukovsky, of Queens, N. Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 18, 1955, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of said Act. The said respondents failed to file answer to the complaint and failed to appear at the time and place fixed for hearing. At said hearing before the above-named hearing examiner, theretofore duly designated by the Commission, the attorney in support of the complaint moved that the hearing be closed without the taking of testimony and that the hearing examiner proceed, in due course, to find the facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of said complaint. It appearing that the aforesaid "Notice" provided that the failure of respondents to file timely answer and to appear at the time and place fixed for hearing would be deemed to authorize the Commission and the hearing examiner to find the facts to be as alleged in the complaint and to issue an order in the form therein set forth, the hearing examiner granted said motion and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order.