

Decision

IN THE MATTER OF
ANHEUSER-BUSCH, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 6331. Complaint, Apr. 19, 1955—Decision, Sept. 10, 1957

Order requiring one of the nation's leading breweries, with manufacturing plants in St. Louis, Mo., Newark, N.J., and Los Angeles, Calif., to cease reducing beer prices in any market where it competes with others unless it proportionally reduces prices everywhere, following findings that in 1954, while maintaining its price elsewhere in the nation, it had reduced the price on its Budweiser beer in the St. Louis area to match its regional competitors' price, with general adverse effect on the local market and in violation of Sec. 2(a) of the Clayton Act as amended.

Mr. Francis C. Mayer and Mr. Philip R. Melington for the Commission.

Mr. Dwight Ingamells, of St. Louis, Mo., *White & Case*, by *Mr. Edgar Barton* and *Mr. Howard J. Aibel*, all of New York, N.Y., and *Gravelle, Whitlock & Markey*, by *Mr. Harold F. Baker*, of Washington, D.C., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Formal complaint herein, issued April 19, 1955, charged respondent with price discrimination in violation of Section 2(a) of the Clayton Act, as amended (15 U.S.C. 13), in drastically cutting its price of beer in St. Louis and St. Louis County, while maintaining it elsewhere in the Nation, thereby causing substantial competitive injury to respondent's competitors in the reduced area through loss of sales to them and consequent gain to it. Respondent's answer, filed June 17, 1955, admitted descriptive and jurisdictional facts, the reductions and their amounts, denied discrimination and the effects alleged therefrom, and affirmatively pleaded that such price reductions were made in good faith to meet the equally low prices of competitors; were made to meet changing market conditions and were justified by differences in the cost of manufacture, sale and delivery as between areas. After ten hearings, resulting in 1118 pages of transcript, and 73 exhibits for the proponent, 217 for the respondent (one of the latter being 15 feet long), the trial wound up on May 15, 1956, after which proposed findings of fact, conclusions

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of law and briefs were filed with me by all counsel. Upon these and the remainder of the record in this case, I make the following:

FINDINGS OF FACT

1. Anheuser-Busch, Inc. (hereinafter referred to as A.B.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 721 Pestalozzi Street, St. Louis, Missouri.

2. A.B. is primarily engaged in the distribution and sale of alcoholic malt beverages under the brand names of "Budweiser," "Busch Bavarian," "Busch Lager" and "Michelob." "Michelob" is distributed solely as a draught beer, "Busch Bavarian" solely as a packaged beer, while "Budweiser" and "Busch Lager" are distributed both as a draught beer and as a packaged beer—in bottles and in cans. A.B. in the sale of packaged beer employs the basic unit of a case, the number of individual containers therein varying as to size and type. A.B. produces these beers in breweries located at St. Louis, Missouri, Newark, New Jersey, and at Los Angeles, California.

3. A.B. now occupies, and for many years has occupied, a major position in the brewing industry on a nation-wide basis, as illustrated by the following comparative table:

	Total paid tax withdrawals U.S.	A.B. gross sales	Percentage of total	National rank
	<i>Barrels</i>			
1952.....	84,836,480	6,034,443	7.11	2
1953.....	86,045,116	6,711,222	7.8	1
1954.....	83,305,402	5,828,760	7.0	1
1955.....	84,974,175	5,616,793	6.61	2

NOTE.—A.B.'s assets in 1954 were \$165,000,000.

4. A.B. has been, and is now, selling its beers in a constant stream of commerce, as "commerce" is defined in the Clayton Act, from the states and places of manufacture to customers and purchasers located in other states, and there is now, and has been, a constant current of trade in such commerce between and among some of the various states of the United States and the District of Columbia in substantial competition with other brewers similarly selling and distributing beer in such commerce.

5. A.B. sells and distributes approximately 75% of its beers through some 700 wholesaler-distributors who resell to licensed dealers and dispensers in their individual trading areas, and approximately 25 percent through 18 branches of respondent, located in

various metropolitan areas directly to bars, liquor stores, chain grocery stores and other retailers.

6. Beer production is widely diffused, primarily because it is a bulky product with high shipping costs relative to unit value. Other contributing factors are the great variety of laws and other regulations in the various states for licenses, the size of containers, the use and amount of advertising, and taxes. This has resulted in the creation and functioning of many local competitive trading areas, usually centering around one or more localized breweries, whose orbit of competition varies directly with the public acceptance of the taste, body, and effect of its particular brand, plus, of course, its financial resources and selling drive. Thus, there are beers which are sold only in one city, or one county, or only one state, or within a small mileage radius from the brewery which may cover parts of several states. These have been referred to in the record as "local" beers. Others sell throughout a multiple state area, but not nationally, in significant volume. These have been referred to as "regional" beers. Five brewers—A.B., Schlitz, Pabst, Miller and Blatz—because they sell and ship into all states in significant volume are referred to as "national" beers, and there are a few others. It is true, as respondent's counsel insist, that a given beer may be classed as regional in one place, local in another, and national in another and, therefore, the three terms have no fixed or constant meaning, competitively or price-wise. Nevertheless, they are handy, if loose, descriptions of their sales orbit, geographically, and the respondent itself in its sales surveys, memoranda and general business operations uses them. For the purposes of this decision a "local" beer will mean one which is sold in substantial volume in three states or less, a "regional" beer, one which is sold in more than three but less than 48 states in substantial volume, and a "national" beer, one which is sold in such volume in all 48 states.

7. Retail distribution is through two distinct channels—off-premise and on-premise consumption—package stores and supermarkets on the one hand—taverns, bars, and restaurants on the other. Practically all draught beer is consumed on-premise, and in 1934 after the repeal of prohibition, 75 percent of all beer produced in the United States was for on-premise consumption. However, since then, due perhaps to the increasing movement to the suburbs, television, and the broadcasting of sporting events, the decline of the tavern as a community social and recreation center, and the shorter work week, the flow had been almost reversed so that in 1954 only 35 percent of the beer produced was consumed on the premises. In 1934 there was only an insignificant amount of beer sold by grocery

stores. Today more than 50 percent of all packaged beer consumed off-premise is bought in grocery stores.

8. All of the above distributive characteristics directly affect price and competition in any given market. There are many more. Most brewers price f.o.b. the brewery. To this must be added varying freight costs, taxes by states, counties and cities, and varying mark-ups by distributor and retailer. Local social and economic conditions also have their effect. All of them are beyond the control of the brewers, yet the price to the consumer is controlled by them.

9. The complaint in this proceeding alleges that "historically, A.B. has sold and distributed beer on the basis of regularly established premium prices generally substantially higher than those prices charged by the various local and regional competing breweries located throughout the U.S." This allegation is denied and vigorously contested by respondent, which introduced voluminous statistical data to show the contrary. Counsel supporting the complaint do not claim this allegation to mean that there is a uniform or constant differential in price obtained by A.B. over prices obtained by regional and local beers. They concede it varies from market to market in amount, that it varies on the various markets from time to time, and that there may be more than one differential in any given market; but they insist that in the great majority of markets there is some premium obtained by A.B. over the prices of its regional and local competitors. The record amply sustains this position. According to a survey conducted by respondent itself, of 78 major markets, considered by it to be a representative cross section of the country, out of 113,305 price comparisons between A.B.'s Budweiser beer and all other regional or local beers (so characterized by A.B.), 100,392, or 88.6%, showed a differential of 5¢ per bottle or can, or more, higher for Budweiser. Over local beers only, 93.2% of the price comparisons showed a differential up to 10¢ per bottle in favor of Budweiser. This same survey, comparing differentials as between May 1954 and October 1953, show many shifts and changes from no differential to a differential and vice versa, as well as many shifts in the amount of differential, but the fact remains that in the overwhelming majority of instances there was some differential. A September 1955, pendente lite new survey by A.B. reduces the above percentages in some degree, depending on the classification of one or more beers, nevertheless it does not change the picture that in by far the greater majority of markets and instances, on both the price to the consumer and to the retailer, Budweiser commands a higher price than local and regional beers. This statistical evidence is confirmed, particularly in its historical aspect, by the testimony of the qualified officials of A.B.'s three most competitive St. Louis

competitors; who sell regionally over wide areas, and by a representative number of beer retailers, called by respondent for other purposes. All of these testified categorically to that effect, and none of them could recall a single instance where Budweiser sold at the same price as the brands put out by the three St. Louis breweries adverted to above—always commanding some differential. Finally and conclusively, A.B. itself has published large advertisements, at the time of the St. Louis price reduction hereinafter described, stating:

Now you can enjoy Budweiser at ordinary beer prices;
The same Budweiser that still sells at premium prices around the world; and
The same Budweiser that outsells any other beer.

Such assertions broadcast by respondent to obtain or increase sales cannot now be gainsaid or watered down by respondent. The finding on this point, accordingly, is that most of the time, and in the large majority of the nation's markets, Budweiser was sold by A.B. at some favorable price differential or differentials over beers of local or regional distribution.

10. In the spring of 1953, the brewery workers' union struck all the plants of the national shipping Milwaukee brewers—Schlitz, Pabst, Millers, and Blatz—most of the "national" beers. The strike was drawn out until August of 1953, the settlement being for increased wages. A.B. was not struck and enjoyed substantial sales increases nationally with its national shipping Milwaukee competitors out of production. Although A.B. was not struck, it, too, signed a wage-increase contract, and, as a result, on October 1, 1953, it and its Milwaukee "national" beer shipping competitors increased prices generally in varying amounts, depending upon locality. The three St. Louis brewer competitors of A.B.—Falstaff Brewing Corporation (hereinafter referred to as Falstaff), Griesedieck Western Brewery Company (hereinafter referred to as G.W.), and Griesedieck Brothers Brewery Company (hereinafter referred to as G.B.) did not follow this raise in prices or make any increase in prices, continuing to sell in the St. Louis market (St. Louis and St. Louis County) at \$2.35 per 24, 12-oz. case of bottles, although many other regional and local brewers in other sections of the United States did so. There was, as a result, a decline in sales for the industry generally, and a sales decline for A.B. specifically from 418,667 barrels in November 1952, to 404,908 barrels in November 1953, nationally. Comparable figures for December of 1952, were 478,647 barrels as against 457,640 barrels in 1953. A sales graph comparing A.B. sales with industry sales, month by month, 1953 with 1952, shows industry sales in October 1953 even with October 1952, but A.B. sales 44% greater in October 1953 than in 1952, whereas in

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November 1953, A.B. sales were only 5% greater than in the same month of 1952, and industry sales 5% less, but in December 1953, industry sales were off only 8% compared with December 1952, whereas A.B. sales were 30% under 1952. In some states A.B.'s sales declines ranged as high as 83%. This, however, was not the picture in the St. Louis market, where A.B. and Falstaff gained in 1953 over 1952, as shown by the following table:

	<i>Barrels</i>			
	1952		1953	
	November	December	November	December
A.B.	15,841	18,148	17,306	20,239
Falstaff	20,796	24,973	24,547	29,218
G.B.	14,003	16,559	12,491	14,177
G.W.	30,715	35,471	26,731	32,509

11. As of January 3, 1954, A.B. was selling its standard 24/12 oz. cases of regular returnable bottles out of its direct-to-retailer branches at the following prices net to the retailer:

St. Louis, Mo.	\$2.93	Washington, D.C.	\$3.65
Chicago, Ill.	3.44	Detroit, Mich.	3.55
Cincinnati, Ohio	3.75	Boston, Mass.	3.69
Houston, Texas	3.70	Kansas City, Mo.	3.15
Bronx, New York	3.68	St. Paul, Minn.	3.53
Kearney, Nebr.	3.68	Sioux Falls, S. Dak.	3.50
St. Joseph, Mo.	3.17	Denver, Colo.	—
Buffalo, N.Y.	3.60	San Francisco, Calif.	3.79
Baltimore, Md.	3.62	Los Angeles, Calif.	3.80

12. On January 4, 1954, on this same unit of sale, A.B. reduced its price from \$2.93 to \$2.68 in the St. Louis market, and again on June 21, 1954, cut its prices on the same unit of the same beer to \$2.35, which was and had been the price on the same unit charged and received by A.B.'s three above-named St. Louis brewer competitors, A.B.'s price changes are shown by the following table:

	<i>Net to Retailer</i>		
	Dec. 31, 1953	Jan. 4, 1954	June 21, 1954
BOTTLES			
24/12 oz. Ret. Reg.	2.93	2.68	2.35
24/12 oz. N.R. Reg.	3.29	3.16	2.81
24/12 oz. N.R. 4/6.	3.29	3.16	2.83
12/32 oz. Ret. Reg.	3.41	3.41	2.96
12/32 oz. N.R. Reg.	3.80	3.65	3.11
36/7 oz. Ret.	2.90	2.75	2.60
CANS			
12/12 oz.	1.67	1.60	1.51
48/12 oz. 8/6.	6.68	6.40	6.08
24/12 oz. Reg.	3.34	3.20	2.99
DRAUGHT			
Budweiser	12.98	12.98	12.48
Michelob	13.98	13.98	13.98

Nowhere else except in the St. Louis market did A.B. make the same or any comparable reduction in price.

13. From this, the complaint charges, and counsel in support thereof contends, that A.B. discriminated in price among its customers, namely, that by cutting and eliminating the price differential to its customers in the St. Louis market, it discriminated against its customers in other markets by continuing to charge them higher prices. Respondent contests this, claiming that because its prices vary from market to market, and are not level or uniform throughout the rest of the nation, that because the amounts by which its prices exceed those of local and regional brewers in those markets likewise vary, that in some few markets there is no excess differential, that these differentials may change momentarily, and A.B. cannot alone maintain them, there can be no discrimination. These arguments are all specious on this record. The fact is that in more than 80% of its markets, A.B. did set its prices to obtain such differentials—that it was obtaining them—that it did not cut its prices anywhere so as to eliminate or materially diminish them except in the St. Louis market, a situation which is the classic regional price discrimination, with competitively unimportant embroidery. *Porto Rican American Tobacco Co. v. American Tobacco Co.*, 30 F. 2d 234; *E. B. Muller & Co. v. F.T.C.*, 142 F. 2d 511; *Moore v. Mead's Fine Bread Co.*, 348 U.S. 115; *In re Maryland Baking Company*, Docket 6327; *In re General Foods Corp.*, Docket 5675; and others. The finding, accordingly, is that on January 4, 1954, and until June 21, 1954, and on June 21, 1954, and subsequent thereto until 1955, respondent did discriminate in the price of its beer, between its customers located in the St. Louis market and elsewhere by the price reductions in that market, above set out.

14. The St. Louis breweries distribute and sell as follows: A.B. in all 48 states; G.B. in 13 states, Alabama, Arkansas, California, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Mississippi, Oklahoma, Tennessee and Texas; Falstaff in 26 states in the West, Midwest, South, and Southeast; G.W. in 20 states, west to California, east to Pennsylvania, south to Georgia, and north to Wisconsin and Michigan. As of January 1, 1954, G.B. sold about 24% of its output in the St. Louis market, Falstaff about 14%, G.W. about 25%, and A.B. about 3½%.

15. For the year 1953, the respective shares of the St. Louis market in packaged beer by these four St. Louis brewers were: A.B. 12.5%, G.B. 14.4%, Falstaff 29.4%, and G.W. 38.9%. For the first six months of 1954, following and including the first price reduction by A.B. on January 4, 1954, but not including, to any appreciable extent, sales after the second price reduction on June 21, 1954, these

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market shares changed as follows: A.B. 16.55%, G.B. 12.58%, Falstaff 32.05%, and G.W. 33%, or, in terms of rank, G.W. remained first, Falstaff remained second, but A.B. replaced G.B. as third, the latter becoming fourth. During this time the total packaged beer sales for the first six months of 1954, as compared with the comparable 1953 period, increased from 5,947,144 to 6,110,326 statistical cases, or 2.7%. However, 122,991 of the cases, represented the increased sales of "all other beers," that is, beers shipped into the St. Louis market by breweries located elsewhere, such as Milwaukee, so that the increase in total market package beer sales of 163,182 (6,110,326 minus 5,947,144) is in fact reduced to 40,191 cases, or an increase in total local brewery packaged sales of only .68%. With "all other [outside] beers" thus increasing in sales, it is obvious that A.B.'s increase in market share from 12.5% to 16.55% must have come from corresponding losses by G.B. and G.W. of 1.82% and 5.9% respectively. This first price reduction was accompanied by changes in, and a stepping up of, sales activity by A.B. by changing from telephone solicitation of orders to a route-wagon system of solicitation and delivery which converted every driver into a personal-solicitation salesman, and a great expansion of its advertising in the St. Louis market.

16. It was, however, after the June 21, 1954, price reduction by A.B. that the roof really fell in on the St. Louis market. As above set out, this reduction was from the January 4, 1954, price of \$2.68 per case of 24/12 oz. regular returnable bottles to \$2.35, exactly the same price, for the same unit, as G.B., Falstaff and G.W. had been selling at for a number of months. This reduction remained in force until March 1, 1955, shortly before formal complaint herein was issued, at which time A.B. increased its price to \$2.80 for the same unit. Shortly thereafter G.B., G.W., and Falstaff increased their beer prices on the St. Louis market for the same sales unit from \$2.35 to \$2.50. The differentials between A.B. and the other three mentioned brewers in the St. Louis market were thus 58¢ prior to January 4, 1954; 33¢ from January 4, 1954, to June 21, 1954; no differential from June 21, 1954, to March 1, 1955; and 30¢ thereafter, all differentials being in favor of A.B.

17. The impact of this second price reduction by A.B. on its own sales was to increase A.B.'s share of the St. Louis market progressively to the following percentages: July 37.6%; August 37.3%; September 37.5%; October 35.7%; November 34.1%; December 38.1%; January 1955 33.2%; February 1955 39.3%, whereas Falstaff's percentage share of the same market decreased from 29.6% in June of 1954 to 25.7% in July, 26.1% in August, 26.8% in September, 28.1% in October, 29.4% in November and December, 30.2%

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in January 1955, and 29.1% in February 1955. More striking decreases were suffered by the other two. G.B. declined from 11.2% in June 1954 to 8.3% in July, 8% in August, 7.9% in September, 7.8% in October, 8.8% in November, 7.9% in December, 5.3% in January, and 4.8% in February of 1955. G.W. had 29.3% of the St. Louis market in June 1954; slid to 21.3% in July, 22% in August, 21.3% in September, 22.5% in October, 22.9% in November, 21.7% in December, 27% in January of 1955, and 23.1% in February of 1955. In rank A.B. jumped into first place by a wide margin and held that position throughout the eight-months' period. The St. Louis market, on the other hand, in total sales increased about 9.2% (9,174,278 [July 1954 through February 1955], as against 8,397,770 [same period 1953-1954]) or an increase of 776,508 cases. A.B., on the other hand, sold only 1,121,065 cases in the same period 1953-1954, but 3,380,648 cases during the comparable period July 1954-February 1955, an increase of 201.5%, or a tripling of case sales.

18. The full statistical and sales volume picture for both price reductions is shown by the following tabulations:

ST. LOUIS AND ST. LOUIS COUNTY—PACKAGE BEER
ANHEUSER-BUSCH, INC.

	Statistical cases	Share of total	Percent change previous year	Area total sales		
				Statistical cases	Share of total	Percent change previous year
1954						
Jan.....	107,283	14.0	+25.1	766,088	Percent 100	+0.8
Feb.....	121,620	14.5	+36.8	837,225	100	+5.6
Mar.....	130,663	13.8	+31.3	949,409	100	+5.1
Apr.....	165,853	15.6	+41.3	1,069,655	100	+10.2
May.....	165,526	15.5	+16.5	1,070,765	100	-3.5
June.....	320,127	22.6	+86.0	1,417,184	100	+0.3
July.....	542,779	37.6	+206.7	1,442,573	100	+0.5
Aug.....	475,897	37.3	+190.9	1,277,121	100	+10.2
Sept.....	457,966	37.5	+199.6	1,220,501	100	+3.8
Oct.....	374,994	35.7	+163.2	1,050,467	100	-1.6
Nov.....	335,326	34.1	+196.7	981,968	100	+11.0
Dec.....	421,575	38.1	+194.3	1,105,990	100	+3.2
Total.....	3,619,609	27.4	+126.5	13,188,946	100	+3.5
1955						
Jan.....	274,513	33.2	+155.9	827,783	100	+8.1
Feb.....	497,598	39.3	+309.1	1,267,875	100	+51.4
Mar.....	193,478	24.5	+48.1	790,909	100	-16.7
Apr.....	182,651	19.5	+10.1	936,458	100	-12.5
May.....	217,584	19.0	+31.5	1,146,239	100	+7.0
June.....	257,641	21.0	-19.5	1,226,733	100	-13.4
July.....	283,561	21.9	-47.8	1,297,051	100	-10.1
Aug.....	266,729	19.8	-44.0	1,316,587	100	+5.4
Sept.....	234,420	20.0	-49.0	1,165,395	100	-4.5
Oct.....	172,462	19.0	-53.9	911,094	100	-13.3
Nov.....	183,602	19.1	-45.2	959,035	100	-2.3
Dec.....	219,226	20.7	-48.0	1,061,488	100	-4.0
Total.....	2,982,962	23.0	-17.6	12,936,647	100	-1.9

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FALSTAFF

	1954			1955		
Jan.....	250,712	32.7	+16.6	250,185	30.2	-0.2
Feb.....	279,860	33.4	+27.0	369,373	29.1	+32.0
Mar.....	312,598	32.9	+24.0	233,447	29.5	-25.3
Apr.....	349,016	32.6	+27.8	351,055	37.5	+6
May.....	346,504	32.3	+9.1	431,846	37.7	+24.6
June.....	419,739	29.6	+4.5	361,963	37.7	+10.1
July.....	371,790	25.7	-8.2	498,260	38.4	+34.0
Aug.....	332,896	26.1	-9.7	529,218	39.3	+59.0
Sept.....	326,809	26.8	-9.4	472,019	40.5	+44.4
Oct.....	295,031	28.1	-12.0	380,130	41.7	+28.8
Nov.....	289,066	29.4	-0.3	401,112	41.8	+38.8
Dec.....	324,994	29.4	-7.2	442,964	41.7	+36.3
Total.....	3,899,015	29.6	+3.9	4,821,572	37.3	+23.7

GRIESEDIECK BROS.

	1964			1955		
Jan.....	99,493	13.0	-14.7	44,140	5.3	-55.6
Feb.....	107,151	12.8	-12.7	60,354	4.8	-43.7
Mar.....	123,552	13.0	-10.3	68,314	8.6	-44.7
Apr.....	142,410	13.3	-1.3	67,932	7.3	-52.3
May.....	137,814	12.9	-16.2	84,108	7.3	-39.0
June.....	158,098	11.2	-21.9	89,437	7.3	-43.4
July.....	120,201	8.3	-46.2	87,713	6.8	-27.0
Aug.....	101,682	8.0	-32.7	94,746	7.0	-6.8
Sept.....	96,171	7.9	-39.4	78,320	6.7	-18.6
Oct.....	81,672	7.8	-42.8	60,488	6.6	-25.9
Nov.....	86,667	8.8	-30.5	62,782	6.6	-27.6
Dec.....	87,256	7.9	-39.8	69,068	6.5	-20.8
Total.....	1,342,167	10.2	-26.8	867,402	6.7	-35.4

GRIESEDIECK WESTERN

	1954			1955		
Jan.....	273,193	35.7	-12.3	223,736	27.0	-18.1
Feb.....	291,829	34.9	-11.6	293,226	23.1	+5
Mar.....	338,061	35.6	-10.3	206,696	26.1	-38.9
Apr.....	352,193	32.9	-10.5	271,067	28.9	-23.0
May.....	347,192	32.4	-22.6	332,132	29.0	-4.3
June.....	414,170	29.2	-28.9	340,930	27.8	-17.7
July.....	307,126	21.3	-47.1	348,354	26.8	+13.4
Aug.....	280,749	22.0	-32.3	362,833	27.0	+29.2
Sept.....	260,146	21.3	-40.3	309,354	26.6	+18.9
Oct.....	236,158	22.5	-36.7	242,325	26.6	+2.6
Nov.....	224,497	22.9	-29.7	251,380	26.2	+12.0
Dec.....	239,697	21.7	-37.7	271,543	25.6	+13.3
Total.....	3,565,011	27.0	-28.0	3,453,576	26.7	-3.1

I have rarely seen such a dramatic exhibition of economic power and price sensitivity in so short a time. Apparently the beer-consuming populace in the St. Louis market equates premium quality with premium price. The tremendous switch from other beers to Budweiser when the premium price was eliminated cannot, on this record, be otherwise accounted for. Apparently also it is the first 30¢ or less of premium or differential in price which touches off the reaction in the St. Louis market. Comparison of results from the January 4, 1954 and June 21, 1954 reductions shows this.

19. This is further illustrated and confirmed by the reaction to the March 1, 1955, increase in price from \$2.35 to \$2.80—45¢, the almost immediate increase of G.B., G.W. and Falstaff to \$2.50, or 15¢ increase—the differential then and since being 30¢. Gain and loss in market shares is shown by the following tabulation:

	Dec. 31, 1953	June 30, 1954	March 1, 1955	July 31, 1955
A.B.	12.5	16.55	39.3	21.03
G.B.	14.4	12.58	4.8	7.36
Falstaff ..	29.4	32.05	29.1	36.62
G.W.	38.9	33	23.1	27.78
All others ..	4.8	5.82	3.94	7.21

It is obvious that A.B.'s gains during the "price experiment" came from G.B. and G.W. Respondent claims that if market statistics are run through February 1956, almost a year after the complaint was filed, they show A.B. down to 17.9%. Regardless of what cut-off date is used, A.B. had only 12.5% of the market just before its first price reduction, but wound up after a price differential was re-established with from 18% to 21%, a gain of 5½% to 8½%. This, respondent characterizes as *de minimis*. But the record shows that such a percentage of market share in nearly every area of the United States is regarded by A.B. as highly significant if favorable, and highly dangerous if it is a loss.

20. This picture, counsel for the complaint contend, amply supports the effect charges of the complaint. Respondent's counsel, of course, contends the opposite. Their position boils down in reality to two points:

1. That the sales losses of competitors in the St. Louis market were caused by other factors than A.B.'s price reductions—factors unconnected therewith, and that the required effect has not been shown as a matter of law.

2. That A.B.'s price reductions were merely a meeting of the equally low prices of its competitors in good faith—that it was simply "testing the market" or "price experimenting" in good faith to find answers to its loss of national off-premise sales.

21. Before discussing these points some comment seems necessary on the basic charge in this case. Counsel seem to be solely preoccupied with the sites of injury—the St. Louis market—and to forget that the charge here is price discrimination and necessarily involving price differences between that St. Louis market and all other markets for A.B.'s products. The cutting of its premium in the St. Louis market, and its subsequent elimination are not violations per se, they are violations only in comparison with the maintenance of higher

prices elsewhere, whether premium or not, because such maintenance enables A.B. to continue profitable operation in more than 90% of its business to subsidize less profit or even no profit on its operations in the St. Louis market, and if competitor injury occurs there, violation of the charging law is *prima facie* made out.

22. Counsel supporting the complaint contend, of course, that the above statistical and market picture, together with the testimony of responsible officials of the three St. Louis breweries, attributing all or the major part of their substantial sales losses in the eight months' period to A.B.'s price reduction amply sustains the charge that the latter diverted business to A.B., substantially lessened competition in the St. Louis market among these brewers, tended to create a monopoly in A.B. and injured, destroyed or prevented competition with A.B. The latter's counsel contend the negative of this factually and as a matter of law.

23. Factually they insist and have proved that G.W. had been progressively losing sales in the St. Louis market prior to 1954, that the management had likewise been maintaining a highly liquid cash position at the expense of renewal or replacement of productive facilities, that it sold out to Carling Brewing Company in October 1954, at a price which reflected the good will to be about one-fifth of realizable net worth, and that therefore it was not injured. Of course, good will being an intangible depends on many other things than sales potentiality alone. As to G.B., respondent has shown that its sales too were progressively declining in the St. Louis market from a share thereof in 1950 of 18% to 14.4% in 1953, that in March 1954, G.B. replaced the beer it had theretofore been selling with an entirely new product which was badly named, poorly merchandised, bitter in taste and "wild"—that is, with an unstabilized air content, and offered the testimony of eleven saloon-keepers and storekeepers that this new beer was disliked by the consumer, with the result that consumer sales thereof dropped sharply during the latter part of 1954, according to their testimony. None of this testimony was from retailers in the St. Louis market (which did and does seem most peculiar to me), but counsel assumes the same thing took place there—that the public taste was the same, or that the product defects were the same. Hence they claim G.B.'s sales loss was its own fault, not that of A.B.

24. Respondent prepared and introduced in evidence a sales graph showing actual packaged-beer sales in the St. Louis market for itself and its three principal competitors there for the years 1952, 53, 54, down to August 1955, and drew a "trend" line, averaged, equated or weighted, showing what would have been the average

sales of each had no price upheaval taken place. This "trend" for 1954 and 1955 belies the contention that causes other than A.B.'s price reductions are the sole explanation for its competitors' sales losses. According to it, G.W. would have normally had, and in fact did have, in March of 1954, a market share of 35%; that absent price raids, and based on the previous 27 months' performance, its share would have decreased from 35% to 30.75% by February 1955. In fact, however, G.W. sank precipitately to about 26% in July 1954, and never thereafter approached its projected trend until after the price increase in March 1955. The same thing is true for G.B., although in less exaggerated fashion. There the losses ranged from about 3% below trend in July 1954, to about 6% below trend in February 1955. Furthermore, prior to the June 1954 price reduction of A.B., G.B.'s largest sales decrease over the same month or year previous had been 16.2%, but thereafter the comparable percentage loss ranged from a low of 30.5% to a high of 55.6%. The argument of counsel for respondent that the testimony of eleven retailers from outside the St. Louis market of their customers' dissatisfaction with G.B.'s new beer and the falling off in sales thereof for that reason was the real reason for G.B.'s sales losses in the St. Louis market, rather than A.B.'s price reductions, is refuted by a comparison of G.B.'s sales losses as between the St. Louis market and the rest of its selling area. Thus exhibits show sales losses of G.B. in the St. Louis market for the last six months of 1954 at 38.44% of the last six months of 1953, whereas a comparable figure for the rest of G.B.'s territory was only 19.32%. Comparable figures for the first six months of 1955 were 45.90% for the St. Louis market and 29.49% for outside St. Louis. The conclusion is that A.B.'s price reductions in the St. Louis market were not the insignificant factor counsel contends, but greatly accelerated an existent slow but steady sales decline in that area of G.B. and G.W. It is one thing to descend several flights of stairs yourself; it is quite another to get thrown down the last flight by others. Murder is none the less murder, even though the victim, medically, may not have long to live.

25. As to the third major St. Louis competitor, Falstaff, respondent seems to argue that because it has eight breweries strategically located in six states, and was, prior to 1954, progressively selling more beer each year and only lost about 4% market share during A.B.'s price reductions, no injury can be found, since Falstaff only had about 14.4% of its business in the St. Louis market. But this record abundantly shows that a much smaller percentage of business in any market is regarded as vastly important to A.B. Why then assume that 14.4%, 20% or 25% of total business are not vital to its

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competitors? It is significant that July of 1954 was the first month in 18 in which Falstaff showed a decrease in sales over the corresponding month of the previous year, and that decreases consistently continued throughout 1954, reaching a 32% loss in February of 1955. After A.B. again raised its price on March 1, 1955, Falstaff's interrupted upward march was resumed. The conservative sales estimates of Falstaff, projected for 1954 by Falstaff, as to what it expected for 1954, based on immediate past performance, show them far more than realized after A.B.'s price reductions, with the exception of one month, December 1954. Unlike G.B. and G.W., Falstaff is a picture of arrested and reversed progress, rather than acceleration of decline; but nevertheless fulfills the prescribed statutory requirement of effect, just as fully, although perhaps not as vividly. Since these three brewers, excluding A.B., account for the overwhelming volume of beer sold in the St. Louis market, the picture is one not only of injury to competitors but of injury to their line of commerce. As a factual matter, then, the finding is that A.B.'s successive price reductions, which discriminated price-wise against its customers in other markets, did divert substantial business to A.B. from its competitors in the St. Louis market; did substantially lessen their competition in their line of commerce, and did tend to create a monopoly, and had the potentialities to continue to do so.

26. Respondent contends, however, that as a matter of law, such a finding cannot be made, and carefully reviews seven area price-discrimination cases, four by the courts, three by the Commission, which have dealt with territorial price discriminations. *Porto Rican American Tobacco Co. v. American Tobacco Co.*, 30 F. 2d 234; *E. B. Muller & Co. v. F.T.C.*, 142 F. 2d 511; *Moore v. Mead's Fine Bread Co.*, 348 U.S. 115; *Maryland Baking Company*, F. T. C. Docket 6327; *Balian Ice Cream Co. v. Arden Farms Co.*, 104 F. Supp., 231 F. 2d 356; *Purex Corp., Ltd.*, F. T. C. Docket 6008; *General Foods Corp.*, F. T. C. Docket 5675. Balian, Purex, and General Foods were dismissed, no causal relationship between price discrimination or price differences and competitive injury being shown; the remainder resulted in orders to cease and desist or decrees or judgments. Respondent's counsel contends these latter are no precedents because (a) they all involved a single injuree, whereas here there was more than one competitor in the area of reduction; (b) they all involved a demonstrated intent to eliminate that single competitor; (c) the price reduction was either below that of the intended eliminee, or below the eliminator's cost; and (d) the discrimination was continued long enough to cause serious injury to or destruction of the intended eliminee. I am unable to agree that the scope of the statute

is limited to injury to just one competitor. True, the resultant contraction of competition is clearer in such a situation, but the statute contemplates injury to the line of commerce in which respondent is engaged, and that is present here. All of A.B.'s major competitors lost substantial business. Furthermore, there were a number of smaller competitors involved in the General Foods case—that case was not dismissed because of that, but solely because the Commission found that instead of losing business, a number of them had gained. Intent to eliminate a competitor, not being required to be shown, is immaterial here. Undercutting, or selling below cost, furnish a clearer picture of injury and predatory intent, but no case holds it to be a *sine qua non* of injury, actual or potential, or tendency to monopoly. Similarly, no case holds complete destruction of a competitor necessary before injury is found—neither death nor mayhem are essential. The facts here show a distinct probability of the one, if not the other, if A.B.'s price raid had continued longer, or indefinitely; and we are here concerned not only with actual injury but with potential injury as well, and there is nothing in this record to show that what A.B. did in the St. Louis market, could not or would not be done by it, in the future, in other markets as well. Respondent's reliance on quotes from the General Foods opinion is misplaced, since the targets of the respondent's discriminations there were found to have gained business and not to have been injured, that being the sole ground of dismissal. Furthermore, in line with those cases is the economic strength here of the respondent. A.B. has total assets of more than twice those of its three St. Louis brewery competitors, and, selling nation-wide as it does, is able, although there is no proof that it did, to use income or profit from the rest of its business to stabilize losses, if any, incurred in such a price raid. I repeat, there is no showing that it did, but the record shows it could—the potentiality is there. The fact that the St. Louis market produced only a small fraction of its total business is immaterial in the face of its over-all size and strength, but the fact that its St. Louis competitors were dependent on the St. Louis market for a substantial segment of their business points up not only the size disparity but the extent of the injury.

27. Taking up now respondent's second contention, it is true that lower prices to consumers is the goal of a free-enterprise system, but it must not be done so as to discriminate and benefit some customers at the expense of others, except under stipulated circumstances, such as meeting the equally low price of a competitor. As construed by the Supreme Court in *F.T.C. v. A.E. Staley Mfg. Co., et al*, 324 U.S. 746, Section 2(b) places emphasis on "individual competitive

situations, rather than upon a general system of competition," and further, in *Standard Oil Company v. F.T.C.*, 340 U.S. 231, that "wherever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that price." From these, proponent's counsel argue that since A.B.'s price action was admittedly aggressive rather than defensive, its defense must fail. Respondent's counsel rely on the Balian case cited above, which seems to reject this interpretation. But the factual setting in that case was markedly different. I believe there is a fair implication in Staley and Standard Oil, that Section 2(b) was intended not to absolve price discrimination for aggressive purposes but is limited to and available only to retain business. Such is not the case here. Instead of losing sales to competitors by reason of their lower prices, A.B. had been slowly but steadily gaining, prior to the price raid of 1954. Thus, from 1945 on it had shown, except for 1947, a consistent gain in its share of the St. Louis market from a low of 5.8% to 12.5% for 1953, and a comparable gain, of course, in absolute numbers of cases sold. Market rank had advanced from a very poor sixth to a close fourth. There is nothing in this record to show, that although it was losing business nationally in the off-premise sales channel, that it was losing business in the St. Louis market or in any imminent danger of doing so. Secondly, these price reductions were ordered by its president for two admitted reasons: to get business away from its competitors, and to punish them for refusing to increase prices when A.B. did so in the fall of 1953. Apparently the lesson was well taught and better learned, because those three St. Louis breweries promptly followed A.B. up with price increases in March 1955, and were careful to keep the price difference between them and it at less than the 33 cents whose elimination had cost them so much sales volume. Thirdly, A.B. did not just meet, it beat competition. True, as counsel sarcastically comments, \$2.35 equals \$2.35 and not \$2.30; but numerical prices by themselves can be misleading because they can be superficial. A.B.'s beer at \$2.35 was in the same quantity as its competitors', and selling at the same dollars-and-cents figure, but at \$2.35 it was selling more value than its competitors were, by the ultimate test of any market—the consumer himself. Whether it be called "public acceptance" or "superior public acceptance," the consumer has proved, and A.B. is profiting thereby, that the former will, in most markets, pay more for Budweiser than it will for many other beers—clear proof that such consumer believes that he is getting more in quality, taste, effect or what not, from Budweiser than from others in the same product category for the same money. The

tremendous sales surge to Budweiser away from G.B., G.W., and Falstaff in the St. Louis market, after June 21, 1954, when the consumer could buy all of them at the same price, is dramatic evidence of this. The statistical picture set out above in Paragraphs 17, 18, and 19 also shows that this switching to Budweiser, in the St. Louis market at least, starts at a premium of about 35¢ a case of 24/12 oz. bottles. Below that spread consumers evidently think, in substantial numbers, whose substantiality increases as the spread decreases, that they are getting more, cent for cent, from Budweiser than they are from the beers of G.B., G.W., and Falstaff. Counsel cites *Standard Oil Co. v. F.T.C.*, 233 F. 2d 649, as rejecting and "laying to rest" this reasoning. Without discussing whether the language does in fact fully reject, suffice it to say that that case is on appeal and not yet finally decided. Support for such reasoning is found in *E. B. Muller & Co. v. F.T.C.*, 142 F. 2d 511, and in *F.T.C. v. Standard Brands, Inc.*, 189 F. 2d 510, in neither of which was it expressly rejected, and in both of which it was an argued and briefed issue. Nor do I believe that the Court's remarks thereon were "chance." The finding on this point is that Budweiser has wide public acceptance geographically, and superior public acceptance in most markets, not because it does or has sold more than regional or local beers in any given market, but in the sense that in most markets the consumer will pay a higher price for it than for local or regional competitive beers.

28. Respondent's counsel urge that A.B.'s St. Louis price raid was "price experimentation" and "testing the market" for the purpose of finding a solution to serious competitive and distributional problems, and that this is evidence of its "good faith." These were: A.B.'s inability to match in every market the intensive advertising done there by local or regional brewers who were able to concentrate an entire budget in a small area, whereas A.B. had to scatter its shots over the nation; the freight disadvantage over local beers which had no freight to be added, and regionals with less than A.B.; decentralization, by the purchase of local breweries; and steady contraction of its principal channel of distribution—on-premise sale, which accounted for 60% of its distribution. Although A.B.'s sales nationally and through all channels were the highest in the nation, its off-premise sales, particularly through grocery stores, had been steadily declining. Whereas about 75% of industry beer sales were off-premise and the remainder on-premise, A.B.'s ratio was almost the reverse of the industry. To meet these problems, A.B. conducted various surveys and field tests to determine market conditions, and sent out questionnaires to its distributors and wholesalers, asking

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their remedial suggestions. Various solutions were considered; smaller size packages of Budweiser to sell at the same prices through off-premise outlets, particularly grocery stores; new beers to sell at, or about, the same prices as competitors' local and regional beers; and expanded advertising and sales promotion. Sometime between the fall of 1953 and early in 1954 A.B.'s management decided on a reduction in container size—10 oz. cans or bottles in place of 12 oz. to sell at or near the price of competitive local and regional 12-oz. size; in other words, to sell less beer for the same price as more beer of others. Implementing this was a long and tedious problem because of the tax, warehousing, and production problems it raised, and because of the many variant state regulations, some of which, by law, fix beer container sizes, others of which, rest discretion in Alcoholic Beverage Control Board. The 25¢ price reduction of January 4, 1954, in the St. Louis market did produce increased off-premise as well as on-premise sales, but the results were considered by A.B. as not definitive, and the June reduction was ordered. Counsel claims the spectacular results thereof made it clear to management that the solution lay in marketing the 10-oz. container wherever possible, as against a 12-oz. competitive container, but also to bring out a new and cheaper beer. This latter was determined upon in the fall of 1954 and placed on the market in March of 1955, and proved a flop. Then A.B. brought out a still different cheaper beer under different merchandising techniques in August 1955, but the record does not show its degree of success.

29. On the above basis, counsel contend that A.B.'s price reductions were to obtain market information with which to formulate a long-range marketing policy, and to "buy time" by "competing on a price basis until such new long-range policies could be placed in effect," and conclusively establish A.B.'s good faith.

30. In my opinion, however, the sales considerations which respondent alleges as the reasons for this "experiment," taken at full value, do not outweigh the contrary factors discussed in Paragraph 28 above. I cannot, however, take them at full value. The "experiment" clearly demonstrated that lower prices on Budweiser was the answer to volume, both on-premise and off-premise; but obviously A.B. did not want that answer, and certainly did not follow it. It wanted an answer which would enable it to keep Budweiser up in price, above its competitors, but still obtain more volume by other means—cheaper "fighting brand" beer or less quantity for the same price, because that is what A.B. undertook and since has done. And it is inferable from the record that these two expedients were pretty well determined upon by or before June of 1954. It is questionable whether the June reduction was in fact a seeking of an answer, as

alleged. Furthermore, why an eight months' experiment when three months' trial produced, so far as the record goes, equally as good statistical sales results as the eight months?

31. The conclusory finding is that respondent's 1954 price reductions in the St. Louis market were not made in good faith to meet the equally low prices of competitors.

The order proposed by counsel in support of the complaint, after the usual injunction against discrimination, finishes with "and where such lower prices reduce in any consequential amount the theretofore existing differential in price between respondent's product and the product of any of such other sellers, unless respondent reduces all prices in all areas by the same percentage." Entry of this order is refused because:

1. The key word "consequential" is vague and indefinite and, on the record, varies so from market to market as to have no meaning, hence would be impossible of compliance or enforcement.

2. The words "theretofore existing differential" are likewise incapable, in many instances, of definite ascertainment, and therefore incapable of compliance or enforcement. This obviously means the higher price which respondent obtains in most markets for its beer over other beers, but there are beers which command a higher price than Budweiser in some markets. That spread, too, is a "theretofore existing differential."

3. The fact that different quantities have different differentials, whether "theretofore existing" or not, makes the order as submitted unworkable.

CONCLUSIONS OF LAW

1. To reduce prices in one area, while maintaining them in all other areas, is discrimination in price within the prohibition of Section 2(a) of the Clayton Act, provided the required effects follow therefrom, regardless of whether there is a uniform price or varying prices in the unchanged areas.

2. Accelerating an existing downward sales trend, or arresting and reversing an upward sales trend of competitors, is evidence of the required statutory effect.

3. Partial recovery from competitive injury suffered during a period of price discrimination, when the latter is abandoned or partially abandoned, does not excuse its employment.

4. The good faith requirement of Section 2(b) of the Clayton Act is not met where a price discrimination, with the required resultant competitive effect, is for aggressive rather than defensive purposes.

5. The law does not require that a competitor be put out of business completely or permanently, or irretrievably crippled, by a price

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discrimination before a finding of the prescribed competitive effect can be made.

ORDER

It is ordered, That the respondent, Anheuser-Busch, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of beer of like grade and quality, do forthwith cease and desist from discriminating, directly or indirectly, in price, between different purchasers engaged in the same line of commerce, where either, or any, of the purchases involved in such discrimination are in commerce, as "commerce" is defined in the Clayton Act, by a price reduction in any market where respondent is in competition with any other seller, unless it proportionally reduces its prices everywhere for the same quantity of beer.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The respondent in this proceeding is charged by the complaint with price discrimination in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13).¹ Specifically, it is alleged that respondent in connection with the sale of beer made two successive price reductions in the area of St. Louis County, Missouri, from its previously established regular premium price for that area, and that it made no similar price reductions in any other area. It is charged that by so doing respondent discriminated in price between different purchasers of its beer of like grade and quality with the effect, among other things, of diverting substantial business from respondent's competitors to the respondent.

The hearing examiner, in an initial decision filed October 25, 1956, found that the allegations of the complaint were sustained by the record and ordered respondent to cease and desist such practices. Respondent has appealed from the initial decision.

Respondent, Anheuser-Busch, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located in St. Louis,

¹ Section 2(a) provides in part as follows: "That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: * * *"

Missouri, is primarily engaged in the manufacture, distribution and sale of alcoholic beverage beer under the brand names Budweiser and Michelob. Respondent distributes and sells beer nationally. It has plants located in St. Louis, Missouri, Newark, New Jersey, and Los Angeles, California, and is one of the nation's leading brewers.²

In some areas respondent sells its beer to wholesaler-distributors who resell it to licensed dealers and dispensers in their trade areas, and in other areas, including that around St. Louis, respondent sells directly to liquor stores, chain grocery stores, bars, and other outlets generally termed "retailers." Approximately 25% of respondent's beer sales are made through its branch operations, while sales to wholesaler-distributors account for the remaining 75%.

In the beer industry there is a wide dispersal of manufacturing facilities due mainly to high shipping costs relative to unit value. Thus, there is found throughout the country many beers of local or regional geographic distribution. A few brewers sell beer in every state or nearly every state. These are the so-called "national" beer shipping companies, and include Blatz, Miller's, Pabst, and Schlitz of Milwaukee, Wisconsin, as well as Anheuser-Busch, the respondent.

Throughout the country, respondent's product, Budweiser, is generally sold at some higher price than beers of local or regional distribution. While there is no uniform or constant differential, in the great majority of markets Budweiser is priced over its regional or local competition. This is established in the record by various surveys, the results of which are corroborated by the testimony of both retail and competitor witnesses. Moreover, respondent itself has advertised Budweiser as a premium priced beer. As an example, it was advertised as "the same Budweiser that still sells at the premium prices around the world."

In the St. Louis area, respondent's principal competitors are three regional brewers: Falstaff Brewing Corporation, Griesedieck Western Brewing Company, and Griesedieck Brothers Brewery Company (hereinafter referred to as Falstaff, G.W. and G.B., respectively). Prior to 1954, these competitors sold beer in the St. Louis area at prices substantially less than the price of Budweiser. The prices of

² Anheuser-Busch's national rank 1952 to 1955 is shown by the following table:

	Total paid tax withdrawals U.S.	Anheuser- Busch gross sales	Percentage of total	National rank
	<i>Barrels</i>			
1952.....	84,836,480	6,034,443	7.11	2
1953.....	86,045,116	6,711,222	7.8	1
1954.....	83,305,402	5,825,760	7.0	1
1955.....	84,974,175	5,615,793	6.61	2

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the regional competing beers were in each instance \$2.35 per case.³ Respondent's price was \$2.93 per case, a differential of \$.58. Respondent first reduced its price on January 4, 1954, to \$2.68 per case, leaving a new differential of \$.33. Thereafter, on June 21, 1954, respondent again reduced its price, this time to \$2.35 per case, at which price it was exactly matching the prices of its regional competitors. The following table indicates the complete price changes made in St. Louis by the respondent in this period:

Net to Retailer

	December 31, 1953	January 4, 1954	June 21, 1954
BOTTLES			
24/12 oz. Ret. Reg.	2.93	2.68	2.35
24/12 oz. N.R. Reg.	3.29	3.16	2.81
24/12 oz. N.R. 4/6.	3.29	3.16	2.83
12/32 oz. Ret. Reg.	3.41	3.41	2.96
12/32 oz. N.R. Reg.	3.80	3.65	3.11
36/7 oz. Ret.	2.90	2.75	2.60
CANS			
12/12 oz.	1.67	1.60	1.51
48/12 oz. 8/6.	6.68	6.40	6.08
24/12 oz. Reg.	3.34	3.20	2.99
DRAUGHT			
Budweiser.	12.98	12.98	12.48
Michelob.	13.98	13.98	13.98

On January 3, 1954, respondent was selling standard 24/12 ounce cases of regular returnable bottles from its branches net to the retailer at the following prices:

St. Louis, Mo.	\$2.93	Washington, D.C.	\$3.65
Chicago, Ill.	3.44	Detroit, Mich.	3.55
Cincinnati, Ohio	3.75	Boston, Mass.	3.69
Houston, Texas	3.70	Kansas City, Mo.	3.15
Bronx, New York	3.68	St. Paul, Minn.	3.53
Kearney, Nebr.	3.68	Sioux Falls, S. Dak.	3.50
St. Joseph, Mo.	3.17	Denver, Colo.	—
Buffalo, N.Y.	3.60	San Francisco, Calif.	3.79
Baltimore, Md.	3.62	Los Angeles, Calif.	3.80

Respondent, however, made no price reductions anywhere else in the United States similar to those made in the St. Louis area. As a result of maintaining higher prices to all purchasers outside of the St. Louis area and charging the lower prices, as reduced in 1954, to only those customers in the St. Louis area, respondent discriminated in price as between purchasers differently located.

The price reductions of 1954 remained in effect until March, 1955, at which time respondent increased its price 45¢ per case. Its new

³ Case, as used herein unless otherwise indicated, refers to the standard case of 24 12-ounce regular returnable bottles.

higher price was then \$2.80 per case. Falstaff, G.B. and G.W. almost immediately increased prices to \$2.50 per case, or 15¢ over their prior prices. This resulted in a new differential of 30¢ per case.

One of the principal issues raised on this appeal is whether or not respondent's price reductions in 1954, resulting in discriminations in price between purchasers, were such as to have an injurious effect on competition within the meaning of Section 2(a). The hearing examiner found that respondent's price discriminations had the effect of diverting substantial business to Anheuser-Busch from its competitors in the St. Louis market; the effect of substantially lessening competition in the line of commerce in which Anheuser-Busch and its local competitors are engaged; and the further effect of tending to create a monopoly and having the potentialities to continue to do so.

Prior to the price reduction by respondent in January, 1954, G. W. was the leading seller in the St. Louis market followed by Falstaff, G. B. and Anheuser-Busch. Immediately thereafter, respondent rose to third in volume of sales and G.B. dropped to fourth. Following the June, 1954, price reduction, Anheuser-Busch became the leading seller in the area with Falstaff second, G.W. third and G.B. fourth. Respondent held its first place position in the market throughout the eight months of the full price reduction, from July, 1954, through February, 1955. During this period, the total market sales increased only about 9.2% as against the same period for 1953-54, while respondent, comparing its sales for the same periods, enjoyed an increase of 201.5%, a tripling of sales. On the other hand, Falstaff, G. B. and G. W. during the period of the price reductions lost in their volumes of sale as well as their respective shares of the total market in the St. Louis area. The losses of G.B. and G.W. were particularly large. Comparing the eight months of the full reduction with the same prior period, G.B.'s sales were cut by about 41% and G.W.'s about one-third. In the following table the gains made by the respondent are compared with the losses incurred by its major competition in the St. Louis market:

SALES IN STATISTICAL CASES⁴

	July 1953-Feb. 1954	July 1954-Feb. 1955
Anheuser-Busch.....	1, 121, 065	3, 380, 648
Falstaff.....	2, 601, 665	2, 560, 144
Griesedieck Brothers.....	1, 152, 369	678, 143
Griesedieck Western.....	3, 074, 537	2, 065, 335
All Others.....	448, 134	490, 008
Total Market.....	8, 397, 770	9, 174, 278

⁴ A statistical case means the equivalent of the standard 24/12 oz. case.

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The relative positions of the various competitors in the St. Louis market around the time of respondent's price reductions in 1954, as expressed in shares of the total market, may be shown as follows:

	Dec. 31, 1953	June 30, 1954	March 1, 1955	July 31, 1955
A.B.	12.5	16.55	39.3	21.03
G.B.	14.4	12.58	4.8	7.36
Falstaff ..	29.4	32.05	29.1	36.62
G.W.	38.9	33	23.1	27.78
All Others ..	4.8	5.82	3.94	7.21

G.B. and G.W. had been having progressively less sales volume in the St. Louis market for several years prior to the price reductions by respondent, and thus it is reasonable to expect that their sales under ordinary circumstances would have continued downward at about the same rates. The trends of their losses, however, do not indicate that their sales reverses in the 1954-55 period would have been anywhere nearly as severe if respondent had not so sharply reduced its prices. Falstaff, on the other hand, had been showing progressive gains in sales prior to the period of the price reductions, and according to this trend but for the reductions, Falstaff would not have lost sales, as it did, but would have shown a substantial increase.

Taking into account all of the factors which may have affected the sales of the various competitors in the St. Louis market, it is evident that only respondent's price reductions could have had such a general adverse effect on the market. No other circumstance will account for the fact that, while respondent more than tripled its sales, most of its competition suffered such serious declines. This almost speaks for itself. Respondent's gains could only have been made at the expense of competition since the total sales in the St. Louis market did not increase by any such substantial amount as the sales of respondent and the small combined increase in sales by all of the other competitors could not begin to account for the losses experienced by Falstaff, G.B. and G.W. Respondent's price discriminations manifestly resulted in a substantial diversion of sales from competitors to itself. The gravity of the effect of the sales losses on these competitors is readily apparent from the showing that the St. Louis market accounted for 14% of Falstaff's sales, 24% of G.B.'s and 25% of G.W.'s. Moreover, in connection with the effect on competition, respondent's relative size in the beer industry cannot be disregarded. In 1953, the total sales of Budweiser of 6,711,222 barrels was in excess of even the combined total sales of its three leading St. Louis competitors. Their total sales in 1953 were as follows: Falstaff 2,911,393 barrels, G.W. 1,483,631 barrels, G.B. 778,142 barrels.

Clearly respondent's discriminations in price had the effect of substantially lessening competition in the line of commerce in which Anheuser-Busch, Falstaff, G.B. and G.W. are engaged. We believe that the hearing examiner's findings in respect to competitive injury are amply supported by the record and free of error.

Respondent's next contention in this appeal is that it is entitled to a finding that its price reductions were made in good faith to meet the equally low price of a competitor within the meaning of Section 2(b) of the Clayton Act, as amended.⁵ On the basis of the record in this case, we cannot agree.

The justification provided by Section 2(b) for discrimination in price contrary to the provisions of Section 2(a) is essentially a right of self-defense against competitive price attacks. *Standard Oil Co. v. F.T.C.*, 340 U.S. 231.

In this instance, respondent's purpose could not have been to protect its sales volume in the St. Louis market against an invasion by competitors. Its sales and share of the total market had been steadily increasing. None of the competitors constituted any threat at that time to respondent's relative position in the St. Louis market. In fact, the sales of two of its major competitors had been on the down grade for some time. Respondent argues that, while not losing sales in the St. Louis area, it had been having decreases in sales volume in other markets served by its St. Louis plant. This, however, would not justify the lowering of prices in the one market in which respondent had experienced no losses. The emphasis of Section 2(b) is on individual competitive situations rather than upon a general system of competition. *F.T.C. v. A. E. Staley Mfg. Co.*, 324 U.S. 746. If respondent was faced with an individual competitive situation which it had to meet, it clearly was not in the St. Louis area. However more advantageous it may have been for respondent to lower its prices there, by so doing it has no defense under 2(b).

Prior to the price reductions of 1954, Budweiser was sold at a considerably higher price in St. Louis than most of its competition and not only retained but steadily improved its sales volume in that market. After the price increases of March 1955, when there was

⁵ Section 2(b) provides as follows:

"(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

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again a differential in price between Budweiser and the regional beers in St. Louis, respondent's product continued to sell at a volume greater than that in the years prior to the price reductions. It is evident that Budweiser could and did successfully command a premium price in the St. Louis market as it has in most of the other markets in the nation. The test in such a case is not necessarily a difference in quality but the fact that the public is willing to buy the product at a higher price in a normal market. Clearly, therefore, respondent's reduction from the premium price to match the prices of the regional beers on the market was not a meeting of competition. The effect was to undercut competition. The huge gains which respondent made at the lower prices testifies to that fact. Under the circumstances, respondent cannot justly claim that it was meeting competition.

Considering all the factors, we conclude that the hearing examiner was warranted in finding that respondent's 1954 price reductions in the St. Louis market were not made in good faith to meet the equally low prices of competitors.

Finally, on this appeal, respondent contests the appropriateness of the order contained in the initial decision. It contends, for one thing, that since all the findings as to injury relate to the St. Louis market, the only lawful order which can be entered is one confined to that market. There is no merit in this. As to territorial extent, a respondent having been found guilty of a violation of the Act may properly be required to cease and desist such practices in all areas in which it is doing business. *The Maryland Baking Company v. F.T.C.*, 243 F. 2d 716.

Respondent also argues that the order requires a uniform percentage reduction in all markets. Such an order, it is asserted, is divorced from the realities of beer pricing. The point is made that since differentials vary from market to market, a price reduction might actually result under the order in bringing the price of Budweiser in a great many markets below that of the regional beer. This argument assumes that every price reduction necessitates reductions everywhere. In fact, the order does not preclude respondent from differentiating in price in a new competitive situation involving different circumstances where it can justify the discrimination in accordance with the statutory provisos. Nor is the respondent precluded under the order, if the circumstances are not substantially similar, from lowering its price in good faith to meet an equally low price of a competitor. *F.T.C. v. Ruberoid Company*, 343 U.S. 470.

Respondent also comments in its brief that this is an extraordinary Robinson-Patman Act order in that, unlike the usual order requiring uniform prices, it allegedly requires Anheuser-Busch to charge different prices in different markets in perpetuity. As indicated above, the order does not necessarily require differences in price hereafter since the statutory provisos are implicit in the order. Moreover, since the order is directed to discriminations in price, there is nothing therein to prevent respondent from charging all of its purchasers the same or uniform prices if it so chooses. On the other hand, if the order was worded so as to require respondent to maintain uniform prices this, if anything, would be contrary to market realities. Respondent's prices vary in the different markets in which it sells, resulting in differences which, with the exception of the price discriminations charged in the complaint, are not in issue in this proceeding. This order, while in effect permitting the continuation of these price differences, serves to prevent disproportionate price reductions or discriminations in price beyond the established differences among markets, such as the price discriminations found to be unlawful. The form of the order is entirely appropriate in the circumstances. The order should be modified, however, so that it will be clear its application extends only to prices charged to purchasers engaged in the same line of commerce. Also we have inserted the term "proportionally" in lieu of "percentage" to avoid possible rigidity of interpretation.

Respondent's appeal is denied. It is directed that the order contained in the initial decision be modified in accordance with the views herein expressed.

Commissioners Anderson and Kern did not participate in the decision herein.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that respondent's appeal should be denied and that the order contained in the initial decision should be modified:

It is ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That the respondent, Anheuser-Busch, Inc., a corporation, and its officers, representatives, agents and employees, directly

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or through any corporate or other device, in the sale of beer of like grade and quality, do forthwith cease and desist from discriminating, directly or indirectly, in price, between different purchasers engaged in the same line of commerce, where either, or any, of the purchases involved in such discrimination are in commerce, as "commerce" is defined in the Clayton Act, by a price reduction in any market where respondent is in competition with any other seller, unless it proportionally reduces its prices everywhere for the same quantity of beer.

It is further ordered, That the findings, conclusions, and order, as modified, contained in the initial decision, be, and they hereby are, adopted as those of the Commission.

It is further ordered, That the respondent, Anheuser-Busch, Inc., 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 contained in the initial decision, as modified.

Commissioners Anderson and Kern not participating.

Decision

IN THE MATTER OF
VELOX SERVICE, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6622. Complaint, Aug. 28, 1956—Decision, Sept. 10, 1957*

Consent order requiring a New York City family enterprise, doing business under many trade names, to cease misrepresenting in advertising the quality, properties, regular prices, etc., of a wide variety of merchandise it sold by mail order, and representing falsely that it operated its own factories; and dismissing, as not sustained by the evidence, charges relating to the use of the terms "Completely shock resistant" and "anti magnetic" with respect to watches, and the terms "importer" and "wholesaler."

Mr. Terral A. Jordan for the Commission.

Mr. George Landesman, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1956, issued and subsequently served its complaint in this proceeding against respondents Velox Service, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York; Caesar Torelli and Nelson Torelli, individually and as president, and vice president and secretary-treasurer, respectively, of the corporate respondent; and Charles Torelli, Hilda Torelli, Alice Jean Torelli and Marie A. Thoresen, individually. The office and principal place of business of each of the respondents is located at 352 Fourth Avenue, New York, New York.

After several hearings, at which considerable evidence in support of the complaint was introduced in the record, there was submitted to the hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further