

Complaint

IN THE MATTER OF
THE AMALGAMATED SUGAR CO.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC.
2 (a) OF THE CLAYTON ACT*Docket 6768. Complaint, Apr. 8, 1957—Decision, Jan. 21, 1958*

Consent order requiring a major manufacturer in the beet sugar industry—with principal office at Ogden, Utah, and with plants and warehouses in Utah, Idaho, Oregon, and Washington, and annual sales volume approximating \$46,000,000—to cease violating section 2(a) of the Clayton Act by reducing the price of its sugar on various occasions in Utah only, in which State it sold only a small percentage of its total output, which discriminations in price were particularly harmful to its processor competitors who sold a large part of their sugar in Utah and would have diverted business from them if they had not immediately met the price reductions, and had an additional injurious effect on the growers who supplied beets under contract to respondent and its competitors in the Utah area and whose price received for beets depended on the net returns of the processor.

Mr. Cecil G. Miles and *Mr. James R. Fruchterman* for the Commission.

Howrey & Simon, by *Mr. William Simon*, of Washington, D.C., and *Ray, Quinney & Nebeker*, by *Mr. Paul H. Ray*, of Salt Lake City, Utah, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of section 2 of the Clayton Act (U.S.C. Title 15, section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The Amalgamated Sugar Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 801 First Security Bank Building, 24th Street and Washington Boulevard, Ogden, Utah, with factories and warehouses located as indicated below.

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PAR. 2. The Amalgamated Sugar Co., hereinafter sometimes referred to as Amalgamated, or as respondent, is engaged in the processing of sugar beets and the manufacture, sale and distribution of beet sugar, processed and manufactured at its plants located at Lewiston, Utah; Twin Falls, Rupert, and Nampa, Idaho; and Nyssa, Oreg. It maintains sugar storage warehouses in Ogden and Logan, Utah; and Burley, Idaho. It also maintains sugar distribution warehouses in Portland, Oreg., and Seattle, Wash.

Amalgamated occupies a major position in the beet sugar industry, with a total sales volume of approximately \$46 million annually.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for the past several years has been engaged, in commerce as "commerce" is defined in the aforesaid Clayton Act, having sold its sugar manufactured at its various plants located in the States of Utah, Idaho, and Oregon, and transported or caused the same to be transported from its plants or other places of business in said States named above to purchasers thereof located in other States of the United States, or in other places under the jurisdiction of the United States. Respondent sells and distributes its sugar principally, if not exclusively, through brokers to wholesale concerns, large retail chains, and to direct users. Said product was and is sold and distributed for use, consumption, or resale in the various States of the United States, or other places under the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business, as aforesaid, Amalgamated is now and for the past several years has been in substantial competition with others engaged in the manufacture, sale, and distribution of beet sugar in commerce between and among the various States of the United States, or other places under the jurisdiction of the United States.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent Amalgamated has discriminated in price between different purchasers of its sugar of like grade and quality by selling it to some of its customers at higher prices than to other of its customers.

For example, on or about October 18, 1954, but retroactive to October 8, 1954, respondent reduced the price of its beet sugar, in Utah only, from the basis price of \$8.40 to \$8.10 per hundredweight, or a reduction of 30 cents per hundredweight. This price reduction was withdrawn by respondent on November 2, 1954.

On or about April 12, 1955, but retroactive to April 2, 1955, respondent reduced the price of its beet sugar, in Utah only, from the basis price of \$8.40 to \$7.90 per hundredweight, or a reduction of 50

cents per hundredweight. This price reduction was withdrawn by respondent on October 27, 1955, thereby restoring the previous basis price of \$8.40. On the same date, however, respondent also increased the basis price from \$8.40 to \$8.55 per hundredweight, or an increase of 15 cents per hundredweight, thereby establishing a new basis price of \$8.55 per hundredweight.

On or about January 27, 1956, but retroactive to on or about January 17, 1956, respondent again reduced the price of beet sugar in Utah only from the basis price of \$8.55 to \$8.20 per hundredweight, or a reduction of 35 cents per hundredweight, which price cut is still in effect.

Respondent's discriminations in price, as described above, were sufficient to divert business from its competitors, and would have done so if its competitors had not immediately met these price reductions. Further, these price reductions by respondent are sufficient to divert business from respondent's competitors to respondent in the future, unless its competitors continue to meet respondent's reduced prices.

These price cuts by respondent, being effective in Utah only, are particularly harmful to processors who sell a large part of their sugar in Utah. By comparison, the effects of these reduced prices have not been as great on respondent, inasmuch as it sells only a small percentage of its total output in said State. Said price cuts have been extremely harmful to the one-unit processors who sell extensively in Utah. For instance, the following table shows the percentage of sales in Utah only as compared to total sales, by respondent and its chief competitors in this area, for the crop year ending September 30, 1956:

	Crop years ending	Bags sold in Utah	Percent of total sales
The Amalgamated Sugar Co.....	Sept. 30, 1956	148,214	3.325
Utah-Idaho Sugar Co.....	Sept. 30, 1956	295,297	9.20
Layton Sugar Co. (one unit processor).....	Sept. 30, 1956	106,238	63.21
Franklin County Sugar Co. (one unit processor).....	Sept. 30, 1956	47,439	25.36

PAR. 6. The effect of respondent's said discriminations in price may be substantially to lessen competition in the line of commerce in which respondent is engaged. Said practices of respondent also have a dangerous tendency unduly to hinder competition, or to injure, destroy or prevent competition between respondent and its competitors, and tend to create a monopoly.

Furthermore, by virtue of provisions in contracts between the beet-sugar processors and the growers of beets for said processors, the price the grower receives for his beets depends on the net returns the proc-

essor receives for his sugar. As a result of these price cuts, initiated by respondent, the net returns received by these processors were lowered, thereby reducing the price the grower received for his beets. Therefore, the aforesaid discriminatory pricing practices of Amalgamated have had and continue to have an additional injurious effect on the beet growers who supply beets, under contract, to respondent and to respondent's competitors, in this area.

PAR. 7. The discriminations in price, as hereinabove alleged and described, are in violation of subsection (a) of section 2 of the aforesaid Clayton Act, amended by the Robinson-Patman Act.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 8, 1957, charging it with having violated section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. Respondent appeared by counsel and entered into an agreement, dated October 14, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located at 801 First Security Bank Building, 24th Street and Washington Boulevard, in the City of Ogden, State of Utah.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the respondent, The Amalgamated Sugar Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of sugar in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling sugar to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce, where such lower price undercuts the price at which the purchaser charged the lower price may purchase sugar of like grade and quality from another seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order issued November 7, 1957, having placed this case on its own docket for review; and

Counsel for the respondent and the acting director of the Commission's Bureau of Litigation, by joint motion filed January 14, 1958, having requested that the order contained in the hearing examiner's initial decision be modified in certain respects; and

The Commission being of the opinion that the request should be granted:

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, The Amalgamated Sugar Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of sugar in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling sugar to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce, where such lower price undercuts the price at which the purchaser charged the lower price may purchase sugar of like grade and quality from another seller.

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent, The Amalgamated Sugar Co., 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 herein.

Decision

IN THE MATTER OF

THE WARSON PRODUCTS CORP. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6711. Complaint, Jan. 18, 1957—Decision, Jan. 22, 1958

Consent order requiring sellers in St. Louis, Mo., to cease representing falsely in newspaper and radio advertising that their "Warsene Capsules," the only active ingredient of which was salicylamide, were an effective treatment for arthritis, rheumatism, and similar ailments, contained several active ingredients, were "made like a doctor's prescription," were new and different from other products, and were a buffered formula and would not cause stomach upset, etc.

The corporate respondent agreed to the same consent settlement on August 22, 1957, p. 200 herein.

Mr. Harold A. Kennedy for the Commission.

Mr. Donald E. Fahey, of St. Louis, Mo., *pro se* and for Respondent John J. Powers; *Mr. George R. Williams*, of St. Louis, Mo., *pro se*.

INITIAL DECISION AS TO INDIVIDUAL RESPONDENTS BY ABNER E.
LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 18, 1957, charging Respondents with violation of the provisions of the Federal Trade Commission Act by the dissemination of false and misleading advertisements with respect to a drug preparation designated "Warsene Capsules," which respondents sell and distribute in commerce.

On July 22, 1957, Respondents John J. Powers, George R. Williams, and Donald E. Fahey, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and the assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

Respondents John J. Powers, George R. Williams, and Donald E. Fahey are identified in the agreement as individuals and former officers of Respondent The Warson Products Corp. The agreement states that Respondent John J. Powers maintains his office at 5900 North Broadway, St. Louis, Mo., and served as president of said corporate Respondent until July 1956; that Respondent George R. Williams maintains his office at 5935 Jameison Avenue, St. Louis, Mo., and served as vice president of said corporate respondent until August