

Complaint

IN THE MATTER OF
WILLIAM FREIHOFFER BAKING CO., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SECS. 2(a) AND 2(d) OF THE CLAYTON ACT*Docket 7072. Complaint, Feb. 27, 1958—Decision, Jan. 7, 1959*

Consent order requiring a large corporate baker and its subsidiary in Philadelphia to cease granting certain customers preferential discounts of up to 10% from the regular wholesale prices charged their nonfavored competitors; and paying them advertising and promotional allowances of up to 5% of purchases without making like payments available to their competitors.

COMPLAINT

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

Count I

PARAGRAPH 1. Respondent William Freihofer Baking Company is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 20th Street and Indiana Avenue, Philadelphia, Pa.

Respondent Freihofer Baking Company is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 20th Street and Indiana Avenue, Philadelphia, Pa.

Respondent Imperial Foods, Inc. is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 20th Street and Indiana Avenue, Philadelphia, Pa.

Respondents Freihofer Baking Company and Imperial Foods, Inc. are both wholly owned subsidiaries of respondent William Freihofer Baking Company.

PAR. 2. Respondents are now, and for several years have

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been engaged in the business of baking and selling bakery products, including bread, cakes and rolls. Respondents' combined total sales on a consolidated basis covering all subsidiaries were in excess of \$18,800,000 in 1956.

PAR. 3. Said products are sold by the respondents for use, consumption or resale within the United States and respondents cause said products to be shipped and transported from the State of location of its principal place of business to purchasers located in States other than the State wherein the shipment or transportation originated.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade and commerce in said products, among and between the States of the United States.

Respondents maintain and operate baking plants in Philadelphia, Pa.; Allentown, Pa.; and Wilmington, Del. From these plants, respondents ship and sell bakery products in the States of Pennsylvania, Delaware, New Jersey, Maryland and Virginia.

PAR. 4. Respondents, in the course and conduct of their business in commerce, are now and for many years have been competitively engaged with other corporations and with individuals, partnerships and firms in the sale of bakery products.

PAR. 5. Respondents, in the course and conduct of their business, have been and are now discriminating in price between different purchasers of their bakery products of like grade and quality by selling to some purchasers at higher and less favorable prices than they sell to other purchasers competitively engaged with the nonfavored purchasers in the resale of the products.

For example, respondents have given some of their favored purchasers as high as ten percent discount from their regularly established wholesale prices paid by other competing purchasers not receiving the preferential discounts.

PAR. 6. The effect of respondents' discriminations in price, as alleged, may be substantially to lessen, injure, destroy or prevent competition or tend to create a monopoly in the lines of commerce in which respondents and their purchasers are engaged.

PAR. 7. The foregoing acts and practices of the respondents, as alleged, violate Section 2(a) of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 13).

Count II

PAR. 8. Each of the allegations contained in paragraphs 1

through 4 of this complaint are now realleged and incorporated in this count as if they were set forth in full.

PAR. 9. Respondents in the course and conduct of their business, have been and are now paying advertising and promotional allowances to certain favored purchasers without making the allowances available on proportionally equal terms to all other purchasers competing in the distribution of their products.

For example, respondents have given special advertising and promotional allowances to certain of their purchasers which in some instances amounted to five percent of the purchase price. Such allowances were not made available on proportionally equal terms by respondents to other purchasers competing in the resale of respondents' products with those receiving the allowances.

PAR. 10. The acts and practices of respondents, as alleged, violate Section 2(d) of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 13).

Mr. Francis C. Mayer, and Mr. Franklin A. Snyder for the Commission.

Mr. Fairfax Leary, Jr., and Mr. Robert W. Sayre, of Saul, Ewing, Remick & Saul, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On February 27, 1958, the Federal Trade Commission issued its complaint in this proceeding alleging that William Freihofers Baking Co., a corporation, erroneously referred to in the caption of the complaint as William Freihofers Baking Company, a corporation, Freihofers Baking Company, a corporation, and Imperial Foods, Inc., a corporation, hereinafter called respondents, violated the provisions of Section 2(a) and 2(d) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), by discriminating in price between different purchasers of their bakery products of like grade and quality and granting promotional allowances to certain favored purchasers without making the allowances available on proportionally equal terms to all other purchasers competing in the distribution of their products.

On November 6, 1958, there was submitted to the undersigned hearing examiner an agreement executed by respondents William Freihofers Baking Co. and Imperial Foods, Inc., their counsel, and counsel supporting the complaint, providing for the entry of a consent order.

The order disposes of the matters complained about. The agreement has been approved by the director and assistant director of the Bureau of Litigation.

The agreement recites that the respondent Freihofer Baking Company was a corporation organized under the laws of the State of Pennsylvania, and that, on May 18, 1958, said corporation was merged into and now continues in William Freihofer Baking Co.; that the president of William Freihofer Baking Co., in signing the agreement, is acting for the present corporation and the Freihofer Baking Company which has been merged therein; a certificate of merger having been duly issued by the Pennsylvania Department of State and by the express provisions of Section 907 of Article 9 of the Pennsylvania Business Corporation Law (Public Law 364, May 5, 1933), the separate existence of the Freihofer Baking Company having ceased. The term "respondents," as used in said agreement, includes the respondent Freihofer Baking Company as an integral part of the William Freihofer Baking Co.

The pertinent provisions of said agreement are as follows: The respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement, and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent William Freihofer Baking Co. is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of business located at 20th Street and Indiana Avenue, Philadelphia, Pa.

2. Respondent Imperial Foods, Inc. is a corporation organized and doing business under the laws of the State of Delaware, with its office and principal place of business also located at 20th Street and Indiana Avenue, Philadelphia, Pa.

3. Respondent Freihofer Baking Company was a corporation organized and doing business under the laws of the State of Pennsylvania, and, on May 18, 1958, was merged into and now continues in respondent William Freihofer Baking Co. The separate existence of Freihofer Baking Company has ceased.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents William Freihofer Baking Co., a corporation, and Imperial Foods, Inc., a corporation, and their officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale of bread and bread products in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of the respondents' products; and

2. Making or contracting to make, to or for the benefit of any customer, any payment or allowance of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondents, unless such payment or allowance is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing with the favored purchaser in the distribution or resale of such products.

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DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of January 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents William Freihofer Baking Co.,¹ a corporation, and Imperial Foods, Inc., a corporation, their officers, representatives, agents, and employees, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

¹ Erroneously referred to in the caption of the complaint and other documents as William Freihofer Baking Company.

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IN THE MATTER OF
THE DENVER DRY GOODS CO.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 7271. Complaint, Oct. 1, 1958—Decision, Jan. 7, 1959*

Consent order requiring a seller in Denver, Colo., to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements, and by advertising which represented falsely that it was liquidating a half million dollars' worth of fur inventory and that purchasers would "Save one-third and more."

Mr. John T. Walker for the Commission.

Dickerson, Morrissey & Dwyer, of Denver, Colo., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with certain violations of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the