

to cease and desist.

IN THE MATTER OF
ALFONSO GIOIA & SONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2(a), 2(d), AND 2(e) OF THE CLAYTON ACT

Docket 7790. Complaint, Feb. 25, 1960—Decision, Oct. 22, 1960

Consent order requiring a macaroni manufacturer in Rochester, N.Y., with annual sales exceeding \$2,500,000, to cease discriminating in price in violation of the Clayton Act by giving some customers but not their competitors substantial discounts, such as special prices and free goods granted to Foodtown Purchasing Co., The Kroger Co., and Stop-N-Shop Super Markets, thus violating Sec. 2(a); and by paying advertising allowances and furnishing demonstrators to favored customers, in violation of Secs. 2(d) and 2(e), respectively.

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 subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Alfonso Gioia & Sons, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 89 Canal Street, Rochester, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of macaroni and macaroni products.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use, consumption, or resale therein, including wholesalers, retailers, and chain stores. Respondent's sales of its products are substantial, exceeding \$2,500,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New York to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business, respondent is in substantial competition with other corporations, partnerships, individuals, and firms engaged in the manufacture, sale and distribution of macaroni and macaroni products.

Many of respondent's purchasers are likewise in competition with each other in the resale of respondent's products within the same trading areas.

PAR. 5. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent is now and has been discriminating in price between different purchasers of its products by selling said products to some purchasers at substantially higher prices than the prices charged competing purchasers for such products of like grade and quality.

PAR. 6. For example, in Cleveland, Ohio, trading area, respondent gave substantial discounts on certain of its products, through the use of special prices and free goods, to Foodtown Purchasing Company, The Kroger Company, and Stop-N-Shop Super Markets but did not offer or grant such discounts to other purchasers who compete with the above-named favored purchasers in the sale and distribution of respondent's products.

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PAR. 7. The effect of such discriminations in price made by respondent, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged, or to injure, destroy or prevent competition with respondent and with purchasers from respondent who receive the lower prices.

PAR. 8. The discrimination in price, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT II

PAR. 9. Paragraphs 1 through 4 of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 10. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 11. For example, during the year 1959, respondent contracted to pay, and periodically did pay, amounts of \$350.00 to Stop-N-Shop Super Markets of Cleveland, Ohio, as compensation or as allowances for advertising or other services or facilities furnished by or through Stop-N-Shop Super Markets in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with Stop-N-Shop Super Markets in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 12. The acts and practices of respondent, as alleged herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT III

PAR. 13. Paragraphs 1 through 4 of Count I hereof are hereby set forth by reference and made a part of this Count III as fully and with the same effect as if quoted here verbatim.

PAR. 14. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent has discriminated in favor of some of its purchasers buying its commodities by contracting to furnish, or furnishing, or by contributing to the furnishing of, such favored competing purchasers services or facilities connected with the handling, sale, or offering for sale such commodities so purchased upon terms not accorded to all other competing purchasers on proportionally equal terms.

PAR. 15. As illustrative of such practices, respondent has furnished certain of its purchasers the services and facilities of special personnel known as "demonstrators", while not according such services and facilities to all other competing purchasers on proportionally equal terms. Such personnel, compensated and furnished by respondent, are installed in the places of business of favored purchasers to assist in promoting the sale of respondent's products to customers of said favored purchasers.

PAR. 16. The acts and practices of respondent, as alleged herein, are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perechinsky for the Commission.

Mr. E. Willoughby Middleton, Jr., of Forsyth, Gianniny & Middleton, of Rochester, N.Y.; *Mr. Alexander M. Lankler* of Chapman, Walsh & O'Connell, of Washington, D.C.; and *Mr. Alexander Akerman, Jr.*, of Shipley, Akerman & Pickett, of Washington, D.C., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of subsections (a), (d), and (e) of Section 2 of the Clayton Act as amended.

An agreement has now been entered into by respondent, its attorneys and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged 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 the agreement; that the making of findings of fact and conclusion 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 this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it may have to challenge or con-

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test the validity of the order; that the order may be altered, modified or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; 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; and 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.

The complaint insofar as it concerns the allegation of "primary line injury" namely, that the effect of respondent's discriminations in price may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with respondent, should be dismissed on the ground that the evidence in the light of subsequent developments is insufficient to substantiate that allegation.

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 agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Alfonso Gioia & Sons, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 89 Canal Street, Rochester, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Alfonso Gioia & Sons, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, 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 purchaser at net prices higher than the net prices charged any other purchaser competing in fact in the resale or distribution of such products.
2. Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's products, unless such payment or con-

sideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

3. Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers from respondent who resell such products in competition with such purchasers who receive such services or facilities.

It is further ordered, That the allegations of "primary line injury" in the complaint, namely, that the effect of respondent's discriminations in price may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with respondent, be dismissed.

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 22d day of October 1960, become the decision of the Commission; and, accordingly:

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