

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.

IN THE MATTER OF
HUBER BAKING COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF THE
CLAYTON ACT

Docket 7629, Complaint, Oct. 27, 1959—Decision, Sept. 2, 1961

Order dismissing, for the reason that respondent was no longer engaged in the baking business, complaint charging a Wilmington, Del., baking company with discriminating in price among its customers, in violation of Sec. 2(a) of the Clayton Act, by allowing some of them discounts from regular prices which were denied to others.

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), Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Huber Baking Company, is a corporation organized, existing and doing business under and by virtue of

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the laws of the State of Delaware, with its principal office and place of business located at 9th and Union Streets, Wilmington, Delaware.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production, sale, and distribution of bread and other bakery products for use, consumption or resale within the United States. Its sales in 1957 were approximately \$3,750,000.

PAR. 3. Respondent sells its products to approximately 4175 retailer customers located in the States of Pennsylvania, New Jersey, Delaware, and Maryland. These customers are regular accounts with whom respondent has entered into contracts or arrangements to supply them with their requirements of bakery products made by it. For the purpose of supplying said customers and of making deliveries pursuant to such contracts or arrangements, respondent ships its products both from its baking plant at Wilmington, Delaware, directly to customers some of which are located in States other than the State of Delaware and from its said plant to sales depots or loading stations located both in the State of Delaware and in other States for regular reshipment to its customers located in the State of Delaware and in other States; and there is and has been at all times herein mentioned a continuous current of trade and commerce, as "commerce" is defined in the Clayton Act, in said products between respondent's plant at Wilmington, Delaware, and said customers.

PAR. 4. In the course and conduct of its business, respondent is now and during the times mentioned herein has been in substantial competition with other corporations, partnerships, individuals and firms engaged in the production, sale, and distribution of bakery products. Respondent's customers are competitively engaged with each other within the various trading areas in which they are engaged in business.

PAR. 5. Respondent, in the course and conduct of its business, as above described, has been for several years last past, and now is, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 6. Among the methods by which respondent discriminates between said purchasers is the granting of a discount of 5% off its list or regular prices on all purchases of said products by certain customers, including chain stores such as Food Fair Stores, Inc., and Penn Fruit Co., both with headquarters in Philadelphia, Pa., and operating food retail stores generally throughout respondent's

marketing area, and denying such discount to other customers who compete with said favored customers.

PAR. 7. The effect of such discriminations in price as alleged herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discriminations.

PAR. 8. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Brockman Horne for the Commission.

Austin, Burns, Appell & Smith, and *Mr. George F. Huber*, New York, N.Y., for the respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

The Federal Trade Commission on October 27, 1959, issued its complaint against the above-named respondent charging it with having violated the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13). It is charged in the complaint that respondent, in the course and conduct of its business, has been for several years last past, and now is, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of said purchasers.

An answer to the foregoing complaint was filed February 3, 1960. This answer is essentially a general denial of the discriminatory charges. Respondent, however, concedes that it sells bakery products to retail customers locally in the States of Pennsylvania, New Jersey, Delaware and Maryland, and further admits that some of respondent's customers are competitively engaged in the retail sale of grocery products with some other customers of respondent in certain trading areas.

Subsequent to the filing of the aforesaid answer, the hearing dates ordered by the undersigned hearing examiner have been rescheduled at the request and consent of counsel for the respondent and counsel in support of the complaint. On February 15, 1961, hearings in the above-entitled matter were cancelled in accordance with the request of counsel, subject to being rescheduled on ten (10) days' notice if trial of the issues was required. No hearings have ensued since issuance of the foregoing order.

On June 19, 1961, respondent made a motion pursuant to Section 3.8 of the Commission's Rules of Practice for an order dismissing the complaint herein upon the ground that respondent is no longer engaged in the manufacture or sale of bakery products, that its baking plant and all of its assets heretofore used in the baking business, including trademarks and good will, have been sold and transferred, and that respondent does not intend and there is no likelihood that it will again engage in the baking business.

In support of this motion respondent submits the affidavit of George F. Huber, Jr., its former president, setting forth the following facts:

1. Prior to March 1, 1961, respondent, Huber Baking Company, was, and for many years had been, engaged in the business of manufacturing, distributing, and selling bread and other bakery products from a single bakery located in Wilmington, Delaware. Since 1942 its bakery products have been sold principally under the trade names and trademarks "Sunbeam" and "Miss Sunbeam." As of March 1, 1961, Huber Baking Company sold, transferred, conveyed and assigned to PAB Baking Company, a Delaware corporation, all of Huber Baking Company's assets used in the operation of its bakery business including the real property used in said business, the Wilmington bakery plant, inventory, machinery, equipment, motor vehicles and accounts receivable, and the trade names, trademarks, licenses and franchises under which said business had been conducted including the trademarks "Sunbeam" and "Miss Sunbeam," together with the good will of said business, in consideration for payment of a sum in excess of \$1,000,000. Said transaction has been closed, the afore-said property and assets have been conveyed and transferred to the purchaser, and said sale and transfer is not defeasible by respondent.

2. Upon the closing of said sale and transfer PAB Baking Company took over and is now continuing, operating and conducting the bakery and baking business theretofore operated by Huber Baking Company. By the terms of sale Huber Baking Company consented to the use by PAB Baking Company of the names "Huber," "Huber Baking" or "Huber Baking Company" in connection with its baking business, and pursuant thereto PAB Baking Company has duly changed its corporate name to "Huber Baking Company, Incorporated" and is now conducting the said baking business under that name. Huber Baking Company agreed to change its corporate name to a name not containing the words "baking" or "bakery" or words of like import, and has duly changed its name to "Huber Investment Company" pursuant to that agreement.

3. Huber Baking Company (now Huber Investment Company) was and is a closely held family corporation. Neither Huber Investment Company, nor any of its stockholders, officers or directors, holds any stock in Huber Baking Company, Inc., nor does Huber Investment Company have any financial interest in or exercise any control over the operations of Huber Baking Company, Inc.

4. Huber Investment Company is not engaged in any mercantile business. The corporation is being continued principally for the purpose of holding and investing the proceeds of the sale of its baking business and other assets of the former Huber Baking Company not connected with the baking business, chiefly cash, securities and real estate.

5. Neither Huber Investment Company nor its officers and directors presently intend that said corporation will hereafter resume or engage in the baking busi-

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ness, and, based upon the foregoing facts and my knowledge of my father's intentions as well as my own, it is my certain belief that there is no likelihood that said corporation will ever again engage in that business.

Counsel supporting the complaint does not oppose respondent's motion to dismiss provided such a dismissal, if granted, is without prejudice to the right of the Commission to reopen the matter should future circumstances so warrant.

After considering the motion to dismiss, the hearing examiner accepts the reasons offered in support of the motion and concurs in the opinion of counsel that it would not appear that the public interest would require continuance of the procedure in the above-entitled matter since no practical purpose beneficial to the public would ensue if the relief sought by the complaint were granted from the hearing of the evidence. Accordingly, it is

Ordered, That the respondent's motion to dismiss the complaint is herein and hereby granted, without prejudice to the right of the Commission to reopen the matter if future circumstances warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 2d day of September 1961, become the decision of the Commission.

IN THE MATTER OF

CHESS RECORD CORP. ET AL.