

sion a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
DIETETIC FOOD CO., INC., ET AL.

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

Docket C-497. Complaint, May 7, 1963—Decision, May 7, 1963

Consent order requiring Brooklyn, N.Y., manufacturers of dietetic foods which they sold to wholesalers, retailers, and retail chainstores, to cease violating Sec. 2(a) of the Clayton Act by charging some purchasers higher prices for their products than they charged others competing with them, such as granting substantial discounts to a Philadelphia wholesaler and to two retail food stores in Pittsburgh without offering discounts to such dealers' 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 subsection (a) 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:

PARAGRAPH 1. Respondent Dietetic Food Co., 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 975 Georgia Avenue, Borough of Brooklyn, County of Kings, City and State of New York.

Respondent Anne Roseman is president of said corporation, and respondent Ronald Kalmore is secretary thereof. These individuals acting in cooperation with one another, formulate, direct and control the acts, policies and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

PAR. 2. Respondents have been and are now engaged in the manufacture, sale and distribution of dietetic foods, dietetic crackers, dietetic preserves and dietetic cookies. Respondents sell said products to a large number of customers located throughout the United States purchasing such products for use, consumption, or resale therein, including wholesalers, retailers and retail chainstores. Respondents' sales of the products are substantial, exceeding \$1 million annually.

PAR. 3. Respondents sell and cause their products to be transported from their principal place of business in the State of New York to purchasers 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 their business in commerce, respondents sell their products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of respondents' like products.

PAR. 5. In the course and conduct of their business in commerce, and particularly since 1959, respondents have been, and are now discriminating in price between different purchasers of their products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the prices charged competing purchasers for such products of like grade and quality.

PAR. 6. For example, in one Philadelphia, Pa., trading area, respondents gave substantial price discounts on their products to one wholesale food distributor, but did not offer or grant such discounts to other wholesale food distributor accounts who compete with the said favored wholesale food distributor in the sale and distribution of respondents' like products.

PAR. 7. As a further example, in one Pittsburgh, Pa., trading area, respondents gave substantial price discounts on their products to two retail food stores, but did not offer or grant such discounts to other purchasers who compete with the said two favored retail food stores in the sale and distribution of respondents' like products.

PAR. 8. The effect of such discriminations in price made by respond-

Decision and Order

62 F.T.C.

ents in the sale of their products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondents are engaged, or to injure, destroy or prevent competition with the favored purchasers from respondents who receive the discriminatory lower prices.

PAR. 9. The discriminations in price made by respondents in the sale of their products, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsection (a) of Section 2 of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated subsection (a) of Section 2 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Dietetic Food Co., Inc., is a corporation 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 975 Georgia Avenue, in the Borough of Brooklyn, County of Kings, City and State of New York.

Respondent Anne Roseman is the president of said corporation, and respondent Ronald Kalmore is secretary thereof. Their addresses are the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

1288

Order

ORDER

It is ordered, That Dietetic Food Co., Inc., a corporation, and its officers, and Anne Roseman and Ronald Kalmore, individually and as officers of said corporation, and respondents' 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 discriminating, directly or indirectly, in the price of such products of like grade and quality :

By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

RADIO CORPORATION OF AMERICA