
IN THE MATTER OF
SCHULZE AND BURCH BISCUIT CO.

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

Docket 7452. Complaint, Mar. 25, 1959—Decision, Feb. 7, 1964

Consent order requiring Chicago manufacturers of biscuit products—mainly cookies and crackers—to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by their use of a discount schedule which classified their retailer customers into (1) independents owning a single store, (2) chains and (3) voluntary groups of independents banded together for buying and advertising, and permitting chains and voluntary groups to combine purchases of all their stores for the purpose of computing the percentage bracket of the schedule to be granted;

And by paying advertising allowances to certain of their customers in accordance with the terms of an advertising plan which were not made known to many smaller competitors of those favored; and paying special advertising allowances to large chain and voluntary group customers which were not made available on proportionally equal terms to all of its competing customers, in violation of Sec. 2(b).

COMPLAINT

The Federal Trade Commission, having reason to believe that Schulze and Burch Biscuit Co., a corporation, has violated and is now violating the provisions of subsection (a) and subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15 Sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

COUNT I

Charging a violation of subsection (a) of Section 2 of the aforesaid Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Schulze and Burch Biscuit Co., hereinafter sometimes referred to as respondent, is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its headquarters and principal place of business located at 1133 West 35th Street, Chicago 7, Illinois.

PAR. 2. Respondent is now, and for many years last past has been, a manufacturer, distributor and seller of biscuit products which consist for the most part of cookies and crackers. Respondent manufactures its biscuit products at its plant located at Chicago, Illinois.

Respondent distributes and sells its biscuit products of like grade and quality to a large number of purchasers located throughout many States of the United States, for use, consumption and resale therein.

Respondent's business is substantial with gross sales in excess of \$17,000,000 for the fiscal year 1957.

PAR. 3. In the course and conduct of its said business respondent is now, and for many years last past has been, shipping its biscuit products from the State in which they are manufactured to purchasers located in other States, in a constant current of commerce, as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent sells in excess of 90 percent of its biscuit products to retail food dealers who in turn resell these products to the consuming public.

Respondent delivers its biscuit products directly to the stores of its retail food dealer customers in respondent's own trucks.

Respondent classifies its retail food dealer customers into three categories. The categories are independents, chains and voluntary groups.

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In the independent category are those customers who own and operate one retail store. The chain category consists of those customers who own more than one retail outlet. Voluntary groups are organizations comprised of a number of independently owned stores who band together for purposes of buying merchandise and advertising.

With regard to said chain and voluntary group customers it is respondent's normal practice to make deliveries to each separate store or outlet belonging to the chain or voluntary group.

PAR. 5. In the course and conduct of its said business in commerce, respondent Schulze and Burch Biscuit Co. has discriminated in price in the sale of its biscuit products by selling such products of like grade and quality at different prices to different and competing purchasers.

Illustrative of such sales at discriminatory prices are the following practices of said respondent:

Respondent is now using, and for several years last past has used, the following discount schedule in pricing its biscuit products of like grade and quality which it sells to its retail food dealer customers, many of whom compete with each other, based upon the monthly volume of purchases of such customer:

<i>Monthly purchases</i>	<i>Percent of discount</i>
Under \$20.00-----	0
\$20.00 to \$39.99-----	2
\$40.00 to \$74.99-----	3½
\$75.00 and over-----	4½

Respondent makes the above stated discount schedule available to all its retail food dealer customers, however in the case of all its chain category customers and certain of its voluntary group category customers respondent permits the purchases of all the stores or retail outlets comprising such chain or voluntary group to be combined for the purpose of computing the percentage bracket of the above stated schedule that such customers are to be granted. As a result each of these chain or voluntary group customers is consistently granted the maximum discount of the above stated schedule even though in many instances the purchases of individual stores or retail outlets belonging to such chain or voluntary group customers standing alone would not be sufficiently large to qualify for that percentage bracket.

PAR. 6. The effect of said discrimination in price by respondent in the sale of biscuit products has been or may be substantially to lessen, injure, destroy or prevent competition:

(a) Between retail food dealer purchasers of respondent's products who receive discounts computed under the above stated schedule and competing retail food dealer purchasers who receive none;

(b) Between retail food dealer purchasers of respondent's products who receive discounts computed under the higher brackets of respondent's above stated discount schedule and competing retail food dealer purchasers who receive discounts computed under the lower brackets of respondent's same discount schedule.

PAR. 7. The discriminations in price herein alleged are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging a violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended, the Commission alleges:

PAR. 8. Paragraphs One through Four inclusive of Count I of this complaint are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted here verbatim.

PAR. 9. In the course and conduct of its business in commerce as aforesaid, respondent Schulze and Burch Biscuit Co. has paid or authorized payment of money, goods or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale or offering for sale of respondent's biscuit products and respondent has not made or offered to make such payments, allowances or consideration available on proportionally equal terms to all of its other customers competing with the customers so favored in the sale and distribution of its biscuit products.

PAR. 10. Illustrative of the conduct alleged in Paragraph 9, above, are the following acts and practices of respondent:

(1) Respondent is now paying and for several years last past has paid advertising allowances to certain of its customers in accordance with the terms of an advertising plan it has devised, but respondent has neglected to make the terms of this plan known to many of its smaller competing customers, and consequently many of these smaller customers have not received and are not now receiving anything in the way of advertising allowances from respondent.

(2) In addition to the advertising plan mentioned in subparagraph (1) above, respondent is now paying, and for several years last past has paid, special advertising allowances to a certain select group of its customers, consisting primarily of large chain and large voluntary group customers, but has not paid or offered to pay such special advertising allowances to other customers many of whom are in competition with the customers so favored. These special adver-

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tising allowances are generally the result of individual negotiations with each of the customers so favored.

PAR. 11. Respondent's acts and practices as alleged in Paragraphs 9 and 10, above, are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Brown, Fox & Blumberg, by *Mr. Nathan S. Blumberg*, Chicago, Ill., for respondent.

Mr. James R. Fruchterman for the Commission.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated March 25, 1959, the respondent is charged with violating the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended.

On November 7, 1960, the respondent and its attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

The hearing examiner finds the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The agreement is entered into subject to the condition that the effective date of the initial decision based hereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter until the cases of *Robert A. Johnston Company*, Docket 7739, [p. 581 herein], and *United Biscuit Company of America*, Docket 7817 [p. 586 herein], have been litigated and decisions on the merits thereof have been issued by the Commission or said cases have been disposed of by means of consent settlements.

The agreement further recites that the right of the Commission to enter a cease and desist order based on the agreement is in no way

conditioned on the issuance of similar cease and desist orders by the Commission in the cases referred to above.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondent Schulze & Burch Biscuit Co. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1133 West 35th Street, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Schulze & Burch Biscuit Co., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of its biscuit 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 to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That respondent Schulze & Burch Biscuit Co., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of its biscuit products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or any other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of respondent's products, unless such payment is in fact made available on proportionally equal terms to all other customers competing in the distribution of such products.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on November 25, 1960, having filed his initial decision in this proceeding accepting an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel supporting the complaint, which agreement is subject to the condition that said initial decision is not to become the decision of the Commission "until the cases of *Robert A. Johnston Company*, Docket 7739 [p. 581 herein] and *United Biscuit Company of America*, Docket 7817 [p. 586 herein], have been litigated and decisions on the merits thereof have been issued by the Commission or said cases have been disposed of by means of consent settlements"; and

The Commission, on the 5th day of February 1964, having issued its decisions in the aforesaid matters:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, Schulze & Burch Biscuit 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 to cease and desist.

Commissioner Elman concurring in the result and Commissioner Reilly not participating.