

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 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 this order.

IN THE MATTER OF
IDEAL MACARONI COMPANY

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

Docket C-766. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring a Bedford Heights, Ohio, manufacturer of macaroni, macaroni products, egg products, sauces and other food products—selling to wholesalers, independent and chain retailers, restaurants, institutions and food processors in Ohio and Pennsylvania—to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by such practices as making available to the Solon, Ohio Division of a national grocery chain operating 79 retail stores in Ohio and Pennsylvania, payments and allowances amounting to approximately \$8,000 including (1) free merchandise for store openings and other promotional purposes, (2) a “stamp promotion” among other promotional discounts and allowances, (3) payments and allowances for newspaper and television advertising, and (4) payments for coupon sales unless such payments and allowances are available on proportionally equal terms to all other customers of respondent competing in the sale of such products.

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 (d) 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 Ideal Macaroni Company is a corporation organized, existing, and doing business under and by virtue of the

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laws of the State of Ohio, with its office and principal place of business located at 26001 Richmond Road, Bedford Heights, Ohio.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of macaroni, macaroni products, egg products, sauces and other food products. Respondent sells its products to a large number of customers located principally in the states of Ohio and Pennsylvania, purchasing such products for use, consumption, or resale. Respondent's customers include wholesalers, independent retailers, retail chain stores, restaurants, institutions and food processors. Respondent's sales of its products are substantial, exceeding \$1,000,000 in 1962.

PAR. 3. Respondent sells and causes its products to be transported from its manufacturing plant and principal place of business in the State of Ohio 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 its business in commerce, respondent sells its products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of such products within the trading areas where said purchasers are located.

PAR. 5. In the course and conduct of its business in commerce, and particularly since 1959, respondent has 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 have not been made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

For example, during 1962 respondent made available to the Solon, Ohio Division of a national retail grocery chain, operating seventy-nine retail grocery stores in Ohio and Pennsylvania through the aforesaid Division, various payments and allowances amounting to approximately eight thousand dollars (\$8,000). These payments and allowances included, but were not limited to: (1) free merchandise for store openings and other promotional purposes; (2) discounts or allowances for various promotional purposes, including a "stamp promotion"; (3) payments and allowances for newspaper and television advertising; and (4) payments and allowances for coupon sales.

Respondent has not offered to pay, or paid, or otherwise made such payments or allowances available on proportionally equal terms to

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all customers competing with said favored national retail grocery chain customer.

PAR. 6. 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.

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated subsection (d) of Section 2 of the Clayton Act, as amended; and having determined that complaint should issue stating its charges in that respect; and having determined that the agreement would afford an adequate basis for appropriate disposition of the proceeding; and

The Commission, subsequent to the foregoing determinations, having issued on March 12, 1964, its order accepting the aforesaid agreement but deferring service on the respondent of the decision and order of the Commission in this proceeding until issuance by the Commission of its decision and order in a related Commission proceeding in which Notice of Determination to issue complaint was directed by the Commission on such date; and the Commission having now determined that such condition is met inasmuch as the decision and order in disposition of such related proceeding, namely, *In the Matter of Procino-Rossi Corporation*, Docket No. C-765 [p. 1230 herein], is issuing simultaneously with the Commission's action herein;

Now, therefore, the Commission hereby issues its complaint in this proceeding in the form contemplated by the aforesaid agreement, makes the following jurisdictional findings, and enters the following order:

1. Ideal Macaroni Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 26001 Richmond Road, Bedford Heights, Ohio.

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

ORDER

It is ordered, That respondent Ideal Macaroni Company, 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:

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

It is further ordered, That the 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 this order.

IN THE MATTER OF

GIOIA MACARONI COMPANY, INC.

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

Docket C-767. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring a Buffalo, N.Y., manufacturer of macaroni, macaroni products, sauces and prepared foods—selling to a large number of wholesalers, independent retailers and chain stores in New York, Pennsylvania, Ohio, Illinois, and Vermont—to cease discriminating in price between different purchasers by, for example, granting a discount to a retail food chain but not to the chain's competitors, in violation of Sec. 2(a) of the Clayton Act; by paying a substantial amount to the operator of a radio station to install FM radio receivers in the stores of some of its retail food chain customers which transmitted music and from time to time advertised its prod-

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ucts, and employing female "merchandisers" to assist the stores receiving the "Beam Cast" service, while not offering proportionally equal services and payments to competitors of favored chain, in violation of Sec. 2(d); and by furnishing demonstrators in business places of certain customers while not furnishing such services to all competing purchasers on proportionally equal terms, in violation of Sec. 2(e).

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 Gioia Macaroni Company, 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 1700 Elmwood Avenue, Buffalo, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of macaroni, macaroni products, sauces and prepared foods. Respondent sells these products to a large number of customers located in the States of New York, Pennsylvania, Ohio, Illinois and Vermont. Respondent's customers include wholesalers, retailers and retail chain stores who purchase these products for resale. Respondent's sales of its products are substantial, exceeding \$3,000,000 annually.

PAR. 3. Respondent manufactures these products in Buffalo, New York and Odessa, Delaware and ships them to purchasers 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 in commerce, and particularly since 1958, respondent has been, and is now, discriminating in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the same products are sold to other purchasers who are in competition with the purchasers paying the higher prices.

PAR. 5. For example, in one trading area in the State of Ohio, respondent granted a discount on its macaroni and macaroni products to a retail food chain and did not grant said discount to other purchasers of products of like grade and quality who compete with the

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avored retail food chain in the sale and distribution of respondent's products. The purchasers not receiving said discount therefore paid higher net prices for respondent's products than the favored retail food chain receiving the aforesaid discount.

PAR. 6. The effect of such discriminations in price made by respondent in the sale of its 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 respondent are engaged, or to injure, destroy or prevent competition with the favored purchasers from respondent who receive the discriminatory lower prices.

PAR. 7. The discriminations in price made by respondent in the sale of its products, 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. 8. Paragraphs One through Three 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. 9. In the course and conduct of its business in commerce, and particularly since 1958, 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. 10. For example, respondent has provided some of its retail food chain customers with a promotional service known as "Beam Cast". Respondent pays a substantial amount of money to a company known as Beam Cast, Inc., which owns an FM radio station. FM radio receivers are installed by Beam Cast, Inc. in the stores owned and operated by the said retail food chain customers. The FM radio station then transmits music into the stores of the said retail food chain customers and from time to time advertises respondent's products which are available for sale in the stores.

Beam Cast, Inc., also employs female "merchandisers" who go into the stores of the said retail food chains which are given the "Beam Cast" service at various time intervals and check respondent's stock on the shelves, rearrange the stock, check inventory, and provide the stores with advice on how to move respondent's products.

Respondent has not offered the "Beam Cast" service to other customers whom compete with the retail food chains which receive "Beam Cast", nor has it made available any other proportionally equal promotional service or facility to other customers who compete with the said retail food chains in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 11. 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. 12. Paragraphs One through Three 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. 13. In the course and conduct of its business in commerce, and particularly since 1958, respondent has discriminated in favor of certain of its purchasers buying its products by contracting to furnish, or furnishing, or by contributing to the furnishing of, such favored purchasers services or facilities connected with the handling, sale, or offering for sale of such products so purchased while not according such services or facilities to all other competing purchasers on proportionally equal terms.

PAR. 14. 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. 15. 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 any admission by the respondent 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 respondent has violated subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended; and having determined that complaint should issue stating its charges in that respect; and having determined that the agreement would afford an adequate basis for appropriate disposition of the proceeding; and

The Commission, subsequent to the foregoing determinations, having issued on March 12, 1964, its order accepting the aforesaid agreement but deferring service on the respondent of the decision and order of the Commission in this proceeding until issuance by the Commission of its decision and order in a related Commission proceeding in which Notice of Determination to issue complaint was directed by the Commission on such date; and the Commission having now determined that such condition is met inasmuch as the decision and order in disposition of such related proceeding, namely, *In the Matter of Procino-Rossi Corporation*, Docket No. C-765 [p. 1230 herein], is issuing simultaneously with the Commission's action herein;

Now, therefore, the Commission hereby issues its complaint in this proceeding in the form contemplated by the aforesaid agreement, makes the following jurisdictional findings, and enters the following order:

1. Gioia Macaroni Company, 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 1700 Elmwood Avenue, Buffalo, 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 Gioia Macaroni Company, 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 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 respondent Gioia Macaroni Company, 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. 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 consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products;

2. 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 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 this order.