

Report in writing stating
it has complied with this order.

IN THE MATTER OF

PRINCE MACARONI MANUFACTURING COMPANY

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

Docket C-768. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring a Lowell, Mass., manufacturer of macaroni, macaroni products, sauces and prepared foods—selling to a large number of wholesalers, retailers and chain stores in various states—to cease discriminating

Complaint

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in price between different customers by, for example, (1) giving substantial price discounts on certain products to two food chains but not to their competitors, in violation of Sec. 2(a) of the Clayton Act; (2) paying a substantial amount of money to a New England food chain with stores in various states, for advertising or other services furnished in connection with the sale of its products, but not making proportionally equal payments available to the chain's competitors, thus violating Sec. 2(d) of the Clayton Act; and (3) furnishing demonstrators to certain purchasers but not to their competitors, 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 Prince Macaroni Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Prince Avenue, Lowell, Massachusetts.

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 its 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 chain stores. Respondent's sales of its products are substantial, exceeding \$8,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Massachusetts 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 respondent's like products.

PAR. 5. In the course and conduct of its business in commerce, and particularly since 1958, respondent has been, and is now discriminat-

ing 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 prices charged competing purchasers for such products of like grade and quality.

PAR. 6. For example, in one New York trading area, respondent gave substantial price discounts on certain of its products to two retail food chains, but did not offer or grant such discounts to other purchasers who compete with the said two favored retail food chain purchasers in the sale and distribution of respondent's like products.

PAR. 7. 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. 8. 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. 9. Paragraphs One through Four 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, 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. 11. For example, during the year 1959, respondent contracted to pay, and did pay, a substantial amount of money to a New England retail food chain with stores located in various States, as compensation or as an allowance for advertising or other services or facilities furnished by or through said retail food chain in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with said favored retail food chain in the sale and distribution of products purchased from respondent.

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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 One through Four 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, 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. 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.

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 an admission by the respondent that the law has been violated as alleged in such com-

plaint, 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. Prince Macaroni Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Prince Avenue, Lowell, Massachusetts.

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

ORDER

It is ordered, That respondent Prince Macaroni Manufacturing 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 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 Prince Macaroni Manufacturing 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:

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.