

SEC. 2(a) OF THE CLAYTON ACT

Docket C-885. Complaint, Mar. 3, 1965—Decision, Mar. 3, 1965

Consent order requiring a New Jersey manufacturer of cookies, cakes, crackers, candy bars and related products who sells and distributes its products through various outlets, including vending machine retailers, to cease

Complaint

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discriminating in price between competing purchasers of its products in violation of Sec. 2(a) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 2(a) of the Clayton Act (U.S.C. Title 15, Section 13) as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Federal Sweets & Biscuit Co., Inc., sometimes hereinafter referred to as Federal, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 60 Clifton Boulevard, Clifton, New Jersey.

PAR. 2. Respondent is engaged in the production of cookies, cakes, crackers and candy bars at its plant in Clifton, New Jersey, and in the sale and distribution thereof through various outlets including vending machine operators. Its total annual sales have amounted to approximately \$8,000,000.

Respondent's products are packaged in 100 count packages for sale to operators of vending machines. The same grade and quality of product is also packaged in 24 count packages for sale to grocery wholesalers and chain stores and supermarkets. Such products are sold at retail for 5¢ and 10¢ per package.

PAR. 3. Respondent, in the course and conduct of its business, has been and is now engaged in commerce, as "commerce" is defined in the amended Clayton Act in that it sells and distributes its products to purchasers thereof located in States other than the State of origin of shipment, and has, either directly or indirectly, caused such products when sold to be transported from the State of origin to purchasers located in other States. There has been a constant flow of trade and commerce in such products between respondent and purchasers located in other States, and such products have been and are now sold for use, consumption or resale within the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent has sold and now sells its products to purchasers, some of whom are in competition with each other and with customers of competitors of respondent, in the purchase, resale and distribution of such products.

PAR. 5. Respondent, either directly or indirectly, for several years last past has been discriminating in price between different purchasers of its products by selling such products to some purchasers at substantially higher prices than the prices at which respondent has sold products of like grade and quality to other purchasers, some of whom are in competition with the less favored purchasers in the purchase, resale and distribution of such products.

For example, respondent has sold its products to vending machine operators in accordance with the following monthly quantity discount schedule:

<i>Volume</i>	<i>Discount (percent)</i>
\$300 to \$500 -----	$\frac{1}{2}$
\$500 to \$1,000 -----	1
\$1,000 to \$2,000 -----	2
\$2,000 to \$3,000 -----	3
\$3,000 to \$5,000 -----	4
\$5,000 and over -----	5

At the end of each month respondent has calculated the total purchases of each of its vending operator accounts and has remitted to them the amounts due in accordance with the foregoing schedule.

The granting of discounts or rebates in accordance with the aforementioned volume discount schedule has resulted in some of respondent's vending machine customers paying substantially higher prices than other vending machine customers, some of whom are in competition with the less favored customers.

PAR. 6. Respondent, in the course and conduct of its business in commerce, is engaged in competition with other corporations, partnerships and proprietorships in the manufacture, sale and distribution of its products.

PAR. 7. The effect of the discriminations in price, as hereinbefore alleged, may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which the purchasers receiving the preferential prices are engaged, or to prevent, injure or destroy competition between and among the purchasers of such products from respondent.

PAR. 8. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the amended Clayton Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption

Decision and Order

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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 Section 2(a) 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 Section 2(a) 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 Federal Sweets & Biscuit 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 60 Clifton Boulevard, Clifton, New Jersey.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent, Federal Sweets & Biscuit Co., Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of cookies, cakes, crackers, candy bars and related products, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Selling such products of like grade and quality to any purchaser at net prices higher than those granted to any other purchaser, who in fact competes with the unfavored purchaser in the resale and 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.

Complaint

IN THE MATTER OF
CITY OF PARIS ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION, THE FUR PRODUCTS LABELING AND THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-886. Complaint, Mar. 4, 1965—Decision, Mar. 4, 1965

Consent order requiring a department store in San Francisco, Calif., to cease misbranding and falsely advertising its fur and textile fiber products, and deceptively invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that City of Paris, a corporation, and George De Bonis, individually and as an officer of said corporation, and Suzanne De Tesson, individually and as chairman of the Board of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent City of Paris is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 199 Geary Street, San Francisco, California.

Individual respondents George De Bonis and Suzanne De Tesson are respectively president and chairman of the board of the corporate respondent, and formulate, direct and control the acts, practices and policies of the corporate respondent, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondent. Respondents are engaged in the operation of a retail department store.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised,