

and form in which it has complied with this order.

IN THE MATTER OF

AMERICAN BAKERIES COMPANY

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

Docket 8120. Complaint, Sept. 23, 1960—Decision, July 8, 1965

Order dismissing a complaint against a Chicago, Ill., distributor of bread and

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other bakery products, which charged the firm with discriminating among its customers in prices, advertising allowances and services or facilities—five years having lapsed since issuance of complaint in this matter without proceeding to trial, the Commission concluded that public interest does not warrant further proceedings on the complaint.

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 by the Robinson-Patman Act, approved June 19, 1936, (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent American Bakeries Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 919 North Michigan Avenue, Chicago 11, Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production, sale and distribution of bread and other bakery products for use, consumption or resale within the United States. Its total net sales for the year 1959 were approximately \$160 million.

PAR. 3. Respondent markets its products under widely advertised brands, including Taystee, Merita and Grennan. Respondent sells its products to thousands of retailer customers and to many restaurants, lunch counters and other servers of food located generally throughout the eastern half of the United States. These customers are regular accounts with whom respondent has entered into contracts or arrangements to supply them with their requirements of the bakery products produced by it. Respondent operates approximately 49 bakeries and many more sales depots or loading stations located in 19 states. For the purpose of supplying said customers and of making deliveries pursuant to such contracts or arrangements, respondent ships its products both from its bakeries directly to its customers, some of which are located in States other than that from which such shipments originate, and from said bakeries to said sales depots or loading stations and to other bakeries, some of which depots and other bakeries are located in States other than that from which such shipments originate, for regular reshipment

to its customers, some of which are located in States other than that from which such reshipments are made. Respondent carries on negotiations across State lines with some of its customers for the sale of its products, and adjustments of accounts between respondent and some of its customers take place across such lines. Advertising, both national and local, is prepared and placed in media by respondent's headquarters or divisional offices.

Respondent, from its headquarters, centrally purchases raw materials for the manufacture of its products, as well as supplies, equipment, and other needs, and ships or causes to be shipped such items from various points to its bakeries located in States other than those from which such shipments originate. Respondent at all times maintains control, directly from its headquarters or through various divisional and regional offices, over the activities of its bakeries, such control being exercised over, among other matters, the area in which and the price at which each bakery is permitted to sell, standards of production to be maintained by said bakeries, all but minor repairs to plants and equipment, personnel policies, and funds collected and disbursed by said bakeries. In the exercise of such controls, respondent's headquarters, divisional and regional offices and its bakeries and sales depots carry on a steady flow of correspondence and other contacts with one another across state lines.

Thus there is and has been at all times herein mentioned a continuous current of trade and commerce, as "commerce" is defined in the Clayton Act, in said products between respondent and its customers.

PAR. 4. In the course and conduct of its business, respondent is now and during the times mentioned herein has been in substantial competition with other corporations, partnerships, individuals, and firms engaged in the production, sale and distribution of bakery products. Respondent's customers are competitively engaged with each other within the various trading areas in which they are engaged in business.

PAR. 5. Respondent, in the course and conduct of its business, as above described, has been for several years last past, and is now, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 6. Among the methods by which respondent discriminates between said purchasers is the granting of discounts (a) ranging

up to 7% off its list or regular price on all purchases of said products by certain of its restaurant, lunch-counter, or other food-serving customers, including large interstate chains operating lunch counters, and (b) ranging up to 5% off its list or regular prices on all purchases of said products by certain food-retailer customers, including large interstate food-retailer chains, and denying such discounts, or granting lesser discounts, to other customers who compete with said favored customers.

For example, during 1959, on purchases approximately \$70,000 for the lunch counters of certain units of the F. W. Woolworth variety-store chain, respondent granted a discount of approximately \$3,500. Further as an example, during 1959 on purchases of approximately \$360,000 for certain units of The Kroger Company, a concern operating a large interstate chain of retail food stores, respondent began granting a discount, and at the end of that year was paying it at the annual rate of approximately \$18,000. At the same time, respondent granted no discount, or a lesser rate of discount, to customers purchasing said products of like grade and quality and who competed with said two favored customers.

Since September 23, 1960, the date of the Complaint in this matter, respondent has granted discounts of 5% and in excess thereof to the following Atlanta, Georgia purchasers, American Service Co. (trading as Green Circle Stores and Handy Pantry Stores); Atlantic Ice Company (trading as E-Z Curb Stores and E-Z Food Stores); The Kroger Company; Colonial Stores, Inc.; Alterman Foods, Inc. (trading as Big Apple Stores); Winn Dixie Stores, Inc.; Echols Ma-Jik Markets, Inc.; F. W. Woolworth Co.; Lane-Liggett Drug Co.; Waffle House Restaurants; and to the following Tampa, Florida purchasers, Tampa Wholesale Grocery Co. (trading as Kash and Karry Wholesale Supermarkets) and the Southland Corp. (trading as 7-Eleven Stores). The practices engaged in by respondent since September 23, 1960 were similar to those engaged in prior to September 23, 1960, were and are now similar.*

PAR. 7. The effect of such discriminations in price as alleged herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discriminations.

*This paragraph was added by Hearing Examiner's Order of Nov. 18, 1964.

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PAR. 8. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

COUNT II

PAR. 9. The allegations of Paragraphs One through Four, inclusive, of Count One of this complaint are hereby adopted and are incorporated herein by reference and made a part of this Count Two as if they were repeated herein verbatim.

PAR. 10. In the course and conduct of its business in commerce, as alleged, 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 were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

For example, during 1959, and during other years, respondent paid money in substantial sums to Food Fair Stores, Inc., a large interstate retail food chain, and to other large customers, as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with said customers in the sale and distribution of respondent's products.

PAR. 11. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

COUNT III

PAR. 12. The allegations of Paragraph One through Four, inclusive, of Count One of this complaint are hereby adopted and are incorporated herein by reference and made a part of this Count Three as if they were repeated herein verbatim.

PAR. 13. In the course and conduct of its business, as alleged, respondent has discriminated in favor of some of the purchasers of its products bought for resale against other of such purchasers by contracting to furnish or furnishing, or by contributing to the furnishing of, services or facilities connected with the handling,

sale, or offering for sale of such products so purchased upon terms not accorded to all purchasers on proportionally equal terms.

For example, during 1959, and for sometime prior thereto, respondent regularly followed the practice of furnishing Milgram Food Stores, Inc., a food retailer operating a chain of approximately 22 units in the Kansas City, Missouri, metropolitan area, personnel, products and equipment for the purpose of demonstrating its products in the stores of said concern, which services or facilities were furnished upon terms not accorded to all purchasers on proportionally equal terms.

PAR. 14. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER DISMISSING COMPLAINT

This matter having come before the Commission upon respondent's motion, filed March 9, 1965, requesting that the complaint herein be dismissed; and

The Commission having considered said motion and having noted that the complaint in this matter originally issued about five years ago and has not yet proceeded to trial; and

The Commission being of the opinion that under the particular circumstances of this case, the public interest does not warrant further proceedings on the complaint herein:

It is ordered, That the complaint be, and it hereby is, dismissed.
