
IN THE MATTER OF

H. P. HOOD & SONS, INC., AND THE GREAT ATLANTIC &
PACIFIC TEA COMPANY, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FED-
ERAL TRADE COMMISSION ACT

Docket 8273. Complaint, January 11, 1961—Decision, August 2, 1966

Order removing case from suspense calendar and dismissing complaint which charged a Boston, Mass., distributor of dairy products and a national retail food chain store with conspiring to fix prices, discriminating against competitors, and attempting to monopolize the dairy products market in New England, in view of the lapse of time since the complaint was issued.



H. P. HOOD & SONS, INC.
AND THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

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Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C.A., Sec. 41 *et seq.*, 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that H. P. Hood & Sons, Inc., a corporation; and The Great Atlantic & Pacific Tea Company, Inc., a corporation, more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby names the previously mentioned corporations, each and all, as respondents herein, and issues its complaint against each of the named parties, stating its charges in that respect as follows.

PARAGRAPH 1. Respondent named herein is H. P. Hood & Sons, Inc. (hereinafter referred to as Hood). Respondent is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 500 Rutherford Avenue, Boston, Massachusetts. Respondent Hood is the dominant dairy concern in New England.

Respondent named herein is The Great Atlantic & Pacific Tea Company, Inc. (hereinafter referred to as A & P). Respondent is a corporation organized and existing under the laws of the State of Maryland with its principal office and place of business located at 420 Lexington Avenue, New York, New York. Respondent A & P is the largest retail food chain in the United States.

PAR. 2. Respondent Hood is extensively engaged in the business of purchasing, processing, distributing and selling fluid milk, cream, ice cream, other dairy products and food products at wholesale to retailer-purchasers, such as respondent A & P, and at retail to home delivery purchasers or consumers, through the six New England States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont and Massachusetts. Respondent Hood's annual net sales are in excess of \$160 million. There has been and is now a pattern and course of interstate commerce in the purchasing, processing, distribution and sale of fluid milk, cream, ice cream, other dairy products and food products by respondent Hood within the intent and meaning of the Federal Trade Commission Act.

Respondent A & P, through fifteen (15) subsidiary corpora-

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tions, is engaged in the operation of retail grocery stores located in a number of the various States of the United States, including the six New England States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont and Massachusetts. Respondent A & P had sales in excess of five (5) billion dollars in 1959. Respondent A & P, in connection with the operation of its retail grocery stores, including those stores located in the six New England States listed above, handles fluid milk, cream, ice cream, other dairy products and food products for resale to the consumers. There has been and is now a pattern and course of interstate commerce in the purchase, distribution and sale of said products by respondent A & P within the intent and meaning of the Federal Trade Commission Act.

PAR. 3. Respondent Hood sells its fluid milk, cream, ice cream, and other dairy products at wholesale to A & P and other retailer-purchasers, and at retail to home delivery purchasers or consumers. Respondent Hood is in competition, both at wholesale and retail, as herein described, with numerous other dairy concerns operating in the six New England States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont and Massachusetts, in the purchasing, processing, distribution and sale of said products, except to the extent that competition has been hindered, lessened, restricted, restrained, destroyed and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth.

Respondent A & P is in competition with other grocery concerns, or retailer-purchasers of fluid milk, cream, ice cream, other dairy products and food products, located in the various States of the United States, including those competitors located in the six New England States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont and Massachusetts, except to the extent that competition has been hindered, lessened, restricted, restrained, destroyed and eliminated by the unfair acts and practices hereinafter set forth.

PAR. 4. Since February 1937, and continuing to the present time, respondents Hood and A & P have effectuated and maintained a conspiracy, combination, agreement, understanding and planned common courses of action in the purchase, processing, distribution and sale of dairy products in restraint of trade of said dairy products, as is more fully set out in Paragraphs Five and Six hereof.

PAR. 5. As a part of, pursuant to and in furtherance of the

aforesaid conspiracy, combination, agreement, understanding and planned common courses of action, respondents have, since February, 1937 and to the present time, pursued and performed, among other things, the following acts, policies and practices:

1. Fixed prices for dairy products;
2. Fixed in-store wholesale and out-of-store retail prices for dairy products;
3. Charged consumer-purchasers of dairy products in some areas substantially higher prices than charged consumer-purchasers elsewhere;
4. Engaged in price wars in the sale of dairy products by charging consumer-purchasers in some areas substantially lower prices than charged consumer-purchasers located elsewhere; including sales that were below cost;
5. Fixed and maintained arbitrary and artificial out-of-store retail prices for dairy products unrelated to prices paid farmer-producers for raw fluid milk;
6. Coerced or forced competitors of respondent Hood to sell dairy products to respondent A & P and competitors of A & P at prices fixed by respondents, including sales at prices that were below cost;
7. Denied to competitors and potential competitors a reasonable opportunity to compete for respondent A & P's purchases of dairy products by making preferential payments to respondent A & P;
8. Agreed to and adhered to certain discounts, terms and conditions such as agency commission, agency adjustment, inflation payments, normal list prices, agency prices, and other formula pricing systems upon which dairy products were sold to A & P and to the purchasing public;
9. Tended to destroy home delivery competition by increasing the differential between home delivered and out-of-store prices; which diverted dairy product sales to retail stores, including those owned by respondent A & P;
10. Attempted to monopolize the dairy products industry in various marketing areas in New England.

PAR. 6. The conspiracy, combination, agreement, understanding and planned common courses of action, and the acts, policies and practices pursuant to and in furtherance of same, as alleged herein, may have and have had the effect of hindering, lessening, restricting, restraining, destroying and eliminating competition in the

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purchasing, processing, distribution and sale of dairy products; may have and have had a tendency to unduly lessen competition or a tendency to create a monopoly in respondents in the purchasing, processing, distribution and sale of dairy products; may constitute and have constituted an attempt to monopolize the dairy products industry in various marketing areas in New England; may foreclose and have foreclosed markets and access to markets to competitors engaged in the purchasing, processing, distribution and sale of dairy products; are all to the prejudice of competitors of respondents and to the public; and all of the aforesaid constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER PLACING PROCEEDING ON SUSPENSE CALENDAR

JUNE 18, 1962

The hearing examiner upon motion of complaint counsel having certified to the Commission the question whether this proceeding should be placed on the Commission's suspense calendar, and respondents having taken no position on the question; and

It appearing that the respondent H. P. Hood & Sons, Inc., together with other corporations and certain individuals, has been indicted in the United States District Court for the District of Massachusetts for practices which allegedly violate Section 1 of the Sherman Act; that charges made in said indictment will require proof similar in scope and content to the evidence to be adduced in this proceeding; and that certain of the defendants in said criminal action are necessary witnesses in this proceeding; and

The Commission having determined that the simultaneous active trial of this matter and the Sherman Act proceeding may give rise to needless complications and possible conflict, and that, therefore, the public interest would best be served by the temporary deferment of further hearings in this proceeding:

It is ordered, That this matter be, and it hereby is, placed upon the suspense calendar until further notice.

Commissioner MacIntyre not participating.

ORDER WITHDRAWING COMPLAINT

The complaint in this matter was issued by the Commission on

January 11, 1961. Prior to commencement of hearings the Commission, by order of June 18, 1962, placed the matter upon the suspense calendar until further notice.

By order of June 9, 1966, the hearing examiner certified to the Commission a motion of counsel supporting the complaint requesting the Commission to remove the case from the suspense calendar and to withdraw the complaint issued against respondents herein. Respondent H. P. Hood & Sons, Inc., has filed an answer concurring in this request.

The Commission is of the opinion, particularly in view of the lapse of time since the complaint was issued and the relatively early stage to which the proceeding has advanced, that the complaint should be withdrawn without adjudication of the issues raised therein. The motion of counsel supporting the complaint will therefore be granted:

Accordingly, *it is ordered*, That (1) the matter be, and it hereby is, removed from the suspense calendar and (2) the complaint be, and it hereby is, withdrawn without prejudice to the right of the Commission to bring a new proceeding if the facts should so justify.

Commissioner MacIntyre not participating.
