

Complaint

IN THE MATTER OF

BEATRICE FOODS CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (d) OF THE CLAYTON ACT*Docket C-1090. Complaint, Aug. 2, 1966—Decision, Aug. 2, 1966*

Consent order requiring a Chicago, Ill., wholesale food processor to cease discriminating among its competing customers in paying promotional allowances for its oriental food products, in violation of Section 2(d) of the Clayton Act.

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

PARAGRAPH 1. Respondent named herein is Beatrice Foods Co. Respondent is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 120 South LaSalle Street, Chicago, Illinois.

PAR. 2. Respondent, through its La Choy Food Products Division, for many years has been and is now extensively engaged in the business of manufacturing, processing, distributing and selling oriental food products including, chow mein, chop suey, soy sauce, bean sprouts, bamboo shoots, water chestnuts, chow mein noodles, chop suey vegetables, mixed Chinese vegetables, and sweet and sour sauce, throughout the United States and in the District of Columbia through the services of more than sixty brokers. Respondent's La Choy Food Products Division manufactures and processes its oriental food products at its plant in Archbold, Ohio. Respondent's total sales for all products for the year 1965 exceeded \$600 million. Respondent's total sales of its La Choy Food Products Division exceeded \$10 million in 1965.

PAR. 3. In the course and conduct of its business in commerce, respondent is now and for many years past has been, engaged in commerce, as "commerce" is defined in the Clayton Act, in that it

Complaint

70 F.T.C.

has sold and distributed and is now selling and distributing, its products to purchasers thereof located in States other than the State of origin of shipments and has, either directly or indirectly, caused such products, when sold, to be shipped and transported from the State of origin to purchasers located in other States. Thus, there is now, and has been, a constant course and flow of trade and commerce in such oriental food products between said respondent in the State of origin and purchasers thereof located in other States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value, including special display or promotional allowances, 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.

Included among such payments are the following: In 1962 La Choy paid to a large California retail grocery chain customer a promotional allowance of \$30 per store for installing the La Choy line in 41 retail outlets in the San Diego area, a total of \$1,230, and a promotion or display allowance of \$1,875 for maintaining a shelf display of La Choy products for a six month period of time.

In January 1962 and 1963 La Choy made various promotional payments to a large wholesaler in the San Francisco Bay area in consideration for the promotional services rendered by the wholesaler's salesmen in promoting La Choy's products for a two week period of time. The payments exceeded \$2,200 each year.

In 1964 La Choy paid a promotional allowance of \$9,325 to a retail grocery chain located in the San Francisco Bay area in consideration for installing La Choy oriental food products on the shelves of its retail stores.

In 1965 La Choy paid a large retail grocery chain with retail outlets in a number of Western States a \$4,000 promotional allowance in consideration for installing La Choy oriental food products on the shelves of eight retail stores located in seven Utah communities.

PAR. 5. The acts and practices of respondent as alleged above, are in violation of subsection (d) 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 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, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Beatrice Foods Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 120 South LaSalle Street, Chicago, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent the Beatrice Foods Co., 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 oriental food 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

Complaint

70 F.T.C.

the offering for sale, sale or distribution of respondent's oriental food 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.
