

PEPSICO, INC.

Docket 8856. Interlocutory Order, May 8, 1974

Order denying respondent's motion that Commission serve formal notice of existence and nature of these proceedings on each of its 513 bottlers, or that it join said bottlers as indispensable parties.

Appearances

For the Commission: *Thomas R. Hefty, William D. Henderson and Raymond L. Hays.*

For the respondent: *Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y.*

ORDER DENYING MOTION TO NOTIFY OR JOIN

In this action, charging respondent with maintaining a territorial allocation system among its bottlers in the market for soft drinks sold under its trade name, respondent moves that the Commission serve formal notice of the existence and nature of these proceedings on each of its 513 bottlers; or, in the alternative, that it join said bottlers as indispensable parties. Complaint counsel oppose both requests, and intervenors argue that the first request is pointless while taking no position as to the second. The administrative law judge, pursuant to Section 3.22(c) of the Commission's Rules of Practice, certified this motion to the Commission by order of April 1, 1974, with the recommendation that it be denied.

This is one of several Commission actions charging certain soft drink manufacturers with similar violations of Section 5 of the Federal Trade Commission Act. From the beginning, respondents in these actions have argued that their bottlers are indispensable parties, because the relief sought could alter the bottlers' rights under contracts with respondents. A motion by respondent Pepsico, setting forth this precise ground for dismissal, was denied by the Commission which, in the same order, denied similar motions in other proceedings* involving the same legal controversy. *Crush International Limited*, 80 F.T.C. 1023 (1972). The United States District Court for the Southern District of New York dismissed Pepsico's suit for an injunction against these proceedings and the Court of Appeals affirmed this dismissal. *Pepsico, Inc. v. F.T.C.*, 472 F.2d 179 (2d Cir. 1972), *cert. denied*, 42 U.S.L.W. 3199 (U.S. Oct. 9, 1973).

Respondent concedes that its bottlers are aware of these proceedings but argues that notification would further explain their right to intervene and would remove even the scintilla of doubt that its bottlers understand the nature of these proceedings. Such notice could easily be provided by Pepsico itself. In view of the notoriety this matter has received, however, and the intervention by a trade association to which 512 of respondents 513 bottlers belong, it is difficult to understand what the proposed notice could accomplish.

Respondent further argues that a staff proposal that relief in this matter include a Metro Area Bottler Handicap has created strong difference of interest among the bottlers depending upon their size and location, thus making it even more vital that each and every bottler be given the fullest opportunity to intervene including complete and formal notice. The need to consider this argument, however, is obviated by complaint counsel's abandonment of that proposed remedy.

That abandonment also obviates the need to further consider the Handicap proposal in connection with respondent's argument for reconsideration on joinder. Respondent presents no other grounds sufficient to warrant reconsideration. Accordingly,

It is ordered, That the aforesaid request for notification of respondent's bottlers be, and it hereby is, denied;

It is further ordered, That the aforesaid request for joinder of said bottlers be, and it hereby is, denied.

*The others include: Crush International Ltd., Docket 8853; Dr. Pepper Co., Docket 8854; The Coca-Cola Co., Docket 8855; The Seven-Up Co., Docket 8857; National Industries, Inc., Docket 8859.

IN THE MATTER OF
UNITED BRANDS COMPANY

ORDERS, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT AND/OR SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8835. Complaint, Feb. 11, 1971—Orders & Opinion, May 14, 1974.

Order dismissing a complaint against a diversified New York City based company with decided interests in the food industry. The complaint challenged respondent's acquisition of the stock or assets of six California and Arizona farming operations producing lettuce and other vegetables.

Order requiring the filing of a special report and periodic subsequent reports informing the Commission of any increase since Feb. 11, 1971, or future increase in access to land commercially suitable for the production of lettuce.

Appearances

For the Commission: *Carl J. Batter* and *Lewis F. Parker*.

For the respondent: *Hourey, Simon, Baker & Murchison*, Washington, D.C. *M. Paul Gallop* and *Paul H. Farrell*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that AMK Corporation has acquired United Fruit Company, and subsequently consolidated AMK into United Fruit Company and changed its name to United Brands Company, and that United Brands Company, then the United Fruit Company, has acquired Nunes Bros. of California, Inc., as well as other similar concerns and corporations, in violation of Section 7 of Clayton Act, as amended, (15 U.S.C., Section 18), and/or in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C., Section 45), hereby issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C., Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C., Section 45(b)), stating its charges in that respect as follows:

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DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint the following definitions shall apply:

(a) *Fresh Produce* includes each and every vegetable and fruit specifically grown in the United States for sale at retail in fresh form, *i.e.*,