

Complaint

70 F.T.C.

IN THE MATTER OF

H. P. HOOD & SONS, INC.

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

Docket 7709. Complaint, December 30, 1959—Decision, August 2, 1966

Order removing case from suspense calendar where it was placed by order of Commission dated June 18, 1962, and dismissing complaint which charged a Boston, Mass., distributor of dairy products with price discriminations in violation of Sections 2(a) and 2(d) of the Clayton Act, in view of the lapse of time since the complaint was issued and relatively small amount of adjudication which has taken place.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsections (a) and (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:

COUNT I

PARAGRAPH 1. Respondent named herein is H. P. Hood & Sons, Inc. 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.

PAR. 2. Respondent is extensively engaged in the business of purchasing, processing, manufacturing, and selling fluid milk and other dairy products through the six New England States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont, and Massachusetts. Hood's annual net sales are in excess of \$125 million.

PAR. 3. Respondent sells fluid milk and other dairy products of like grade and quality to a large number of purchasers located throughout the States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont, and Massachusetts for sale, consumption or resale therein.

Respondent owns, maintains and operates a large number of re-

ceiving stations, processing and manufacturing plants, and distribution depots located in the above-named States, from which it sells and distributes its said products to purchasers.

PAR. 4. In the course and conduct of its business, respondent is now, and for many years past has been, transporting fluid milk and other dairy products, or causing the same to be transported, from dairy farms and other points of origin to respondent's receiving stations, processing and manufacturing plants, and distribution depots located in States other than the State of origin.

Respondent is now, and for many years past has been, transporting fluid milk and other dairy products, or causing the same to be transported, from the State or States where such products are processed, manufactured or stored in anticipation of sale or shipment, to purchasers located in other States of the United States.

Respondent also sells and distributes its said fluid milk and other dairy products to purchasers located in the same States and places where such products are processed, manufactured or stored in anticipation of sale.

All of the matters and things, including the acts, practices, sales, and distribution by respondent of its said fluid milk and other dairy products, as hereinbefore alleged, were and are performed and done in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 5. Respondent sells its fluid milk and other dairy products to retailers and consumers. Respondent's retailer-purchasers resell to consumers. Many of respondent's retailer-purchasers are in competition with other retailer-purchasers of respondent.

Respondent, in the sale of its fluid milk and other dairy products to retailers and consumers, is in substantial competition with other manufacturers, distributors and sellers of said products.

PAR. 6. In the course and conduct of its business in commerce, respondent has discriminated and is now discriminating in price in the sale of fluid milk and other dairy products by selling such products of like grade and quality at different prices to different purchasers at the same level of trade.

Included in, but not limited to, the discriminations in price, as above alleged, respondent has discriminated in price in the sale of said products to retailers and consumers in the Boston and Springfield, Massachusetts market areas by charging said retailers and consumers substantially lower prices than charged by said respondent for the sale of said products of like grade and

quality to purchasers and consumers located in Connecticut, Rhode Island and other towns and cities in the State of Massachusetts.

Respondent has further discriminated in price in the sale of said products by charging many retailer-purchasers substantially higher prices than respondent charged to other retailer-purchasers, many of whom are competing purchasers. Such differences in price have ranged as high as 22 percent for cream and 13 percent for fluid milk.

PAR. 7. The effect of such discriminations in price by respondent in the sale of fluid milk and other dairy products has been or may be substantially to lessen, injure, destroy or prevent competition:

1. Between respondent and its competitors in the processing, manufacture, sale and distribution of such products.

2. Between retailers paying higher prices and competing retailers paying lower prices for respondent's said products.

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

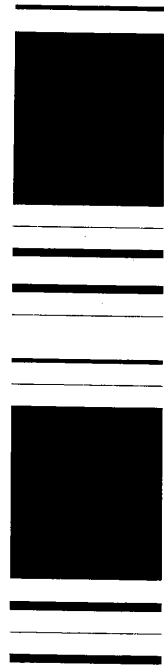
COUNT II

Charging violation of subsection (d) of Section 2 of the Clayton Act, the Commission alleges:

PAR. 9. Paragraphs One through Five of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted herein verbatim.

PAR. 10. In the course and conduct of its business in commerce, as aforesaid, respondent has paid, or contracted for the payment of, money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers, in connection with the handling, sale, or offering for sale of respondent's dairy products and respondent has not made or contracted to make such payments, allowances, or consideration available on proportionally equal terms to all of its other customers competing in the sale and distribution of such products.

Included among such discriminatory and disproportionate allowances, respondent has paid and allowed advertising, promotional and other allowances in connection with the resale of its



said products to some of its customers while not offering or otherwise making available on proportionately equal terms such payments and allowances to other competing customers. As illustrative of such practices, respondent has paid certain amounts of money to selected customers, principally to large grocery store chains, for promotional advertising, in-store promotions, demonstrations, supplementary displays, and new store openings. Respondent has not offered or otherwise made available on proportionately equal terms such allowances and payments to many of its customers who compete with those who receive such benefits. Many of such discriminatory payments and allowances, as herein alleged, have been made by respondent to its customers located and doing business in the States of Massachusetts and Connecticut.

PAR. 11. The acts and practices as alleged in Paragraph Nine above are in violation of subsection (d) of Section 2 of the aforesaid Clayton 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 respondent 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 Kern and MacIntyre not participating.

ORDER WITHDRAWING COMPLAINT

The complaint in this matter was issued by the Commission on December 30, 1959. Hearings were held intermittently in 1960 and were suspended November 18, 1960, during the presentation of the case in chief in support of the complaint. By order of June 18, 1962, the matter was placed upon the suspense calendar until further notice.

By order of June 13, 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 respondent herein. Respondent 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.

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 FEDERAL 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-

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

