

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA :
v. :
H. P. HOOD & SONS, INC.; and :
THE GREAT ATLANTIC & PACIFIC :
TEA COMPANY, INC. :
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CRIMINAL NO. 63-110-C
Filed: MAR 15 1963

INDICTMENT

The Grand Jury charges:

COUNT I

I

DEFENDANT

1. H. P. Hood & Sons, Inc. (hereinafter referred to as "Hood"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Boston, Massachusetts, is hereby indicted and made a defendant herein. Hood is a milk handler in the states of Maine, Vermont, New Hampshire, Connecticut, Rhode Island, and the Commonwealth of Massachusetts.

II

DEFINITIONS

2. Whenever used in this indictment, the terms:
- a. "Raw Milk" means unprocessed cow's milk;
 - b. "Milk" means processed raw milk sold by milk handlers for human consumption as whole milk;

c. "Person" means any individual, partnership, corporation or other legal entity;

d. "Producer" means a person possessing cows and engaged in the business of selling raw milk produced by such cows to milk handlers;

e. "Milk handler" means a person engaged in the processing of raw milk purchased from producers and bottling, selling and distributing milk to wholesale and retail customers.

f. "Jug handler" means a person engaged in the processing of raw milk purchased from producers and bottling, selling and distributing milk directly to consumers primarily in gallon and half-gallon glass jugs;

g. "Ordinary retailer" is a person other than defendant A&P engaged in selling milk directly to consumers.

h. "Greater Boston area" means Boston, Massachusetts and the surrounding area having a radius of approximately 25 miles from Boston, Massachusetts.

i. "New England" means the territory of the states of Maine, New Hampshire, Vermont, Connecticut, and Rhode Island, as well as the Commonwealth of Massachusetts.

j. "Country station" means a facility maintained by a milk or jug handler for the receipt of milk from producers and for storage, refrigeration and sometimes, processing, before further transportation.

III

TRADE AND COMMERCE

3. The Greater Boston area is an extremely active and important milk market. Approximately 350,000,000 quarts of milk, having a value in excess of \$70,000,000 are sold there annually. Of this total 80% is purchased as raw milk from producers located outside the Commonwealth of Massachusetts, of which the State of Vermont

alone accounts for over 30%.

4. Milk is a perishable commodity and can only be stored for a short period of time prior to its sale and consumption. Accordingly, it must reach the consumer within a short time after it is taken from the cow. Milk obtained by producers on dairy farms located in the six New England states is hauled every day to country stations maintained by milk handlers where the raw milk is assembled and then transported in trucks and rail tank cars to processing plants operated by milk handlers. A substantial amount of this raw milk is transported to processing plants owned by milk handlers in the Greater Boston area. When the raw milk arrives at the processing plants it is pumped into large vats for pasteurization. It is then packaged and distributed to wholesale, retail and institutional consumers. Thus, from day to day there is a regular, continuous and substantial flow of milk in interstate commerce from producers in the various states of New England to consumers located in the Greater Boston area.

5. Hood maintains approximately 30 country stations in the six New England states. Substantial quantities of raw milk are transported from these country stations to one of Hood's eight processing plants which are located in the states of Maine, Connecticut, Vermont, New Hampshire, Rhode Island and the Commonwealth of Massachusetts. Hood's largest processing plant is located in Boston, Massachusetts, and the milk processed at this plant is distributed by Hood to consumers in the Greater Boston area. This plant handles approximately 400,000 quarts of milk daily, over 80% of which comes from producers located in Maine, Vermont and New York.

IV

OFFENSE CHARGED

Attempt to Monopolize

6. Beginning at least as early as 1956, and continuing thereafter up to at least January, 1960, the exact dates being to the grand jurors unknown, the defendant and others to the grand jurors,

known and unknown, have been engaged in an attempt to monopolize the above described interstate trade and commerce in milk in violation of Section 2 of the Act of Congress of July 2, 1890 (15 U.S.C. § 2), commonly known as the Sherman Act.

7. Pursuant to and in furtherance of the aforesaid attempt to monopolize the aforesaid trade and commerce, the defendant has done, among other acts, the following:

- a. Harvey P. Hood, then President of the defendant, attended meetings with competitors in the fall of 1956 and in early 1958 at which he planned with competitors a program of joint activity to prevent the entrance of jug handlers into the Greater Boston area and to restrain the growth of such handlers in said area.
- b. Defendant Hood set the prices at which A&P sold milk to consumers in the Greater Boston area. Defendant Hood set such prices at levels designed to eliminate the sale of milk by jug handlers in the Greater Boston area.
- c. Defendant Hood lowered its wholesale prices on milk to designated ordinary retailers in the Greater Boston area and persuaded and induced said retailers to sell milk to consumers at prices designed to eliminate the sale of milk by jug handlers in the Greater Boston area.
- d. Defendant Hood coerced, persuaded and induced other handlers of milk in the Greater Boston area to lower their wholesale prices on milk to designated ordinary retailers in the Greater Boston area and to persuade and induce said retailers to sell milk to consumers at prices designed to eliminate the sale of milk by jug handlers in the Greater Boston area.

- e. Defendant Hood sold milk to A&P and to designated ordinary retailers in the Greater Boston area at prices below Hood's costs.
- f. Defendant Hood attempted to coerce, persuade and induce jug handlers to raise their milk prices to consumers in the Greater Boston area.

V

EFFECTS

8. The effects of the aforesaid offense, among others, have been:

- a. To cause milk price wars for extended periods of time in the Greater Boston area;
- b. To cause other milk handlers and the jug handlers to suffer severe financial losses in order to compete against below-cost milk prices financed by Hood's resources;
- c. To restrict the sale of milk in glass gallon containers in the Greater Boston area.

VI

JURISDICTION AND VENUE

9. The aforesaid offense was carried out in part within the District of Massachusetts within the five years preceding the return of this indictment.

COUNT TWO

VII

THE DEFENDANTS

10. The allegations contained in paragraph 1 of this indictment are here realleged with the same force and effect as though set forth in full.

11. The Great Atlantic & Pacific Tea Company, Inc., a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in New York, New York, is hereby indicted and made a defendant herein. Defendant The Great Atlantic & Pacific Tea Company, Inc. merged into itself The Great Atlantic and Pacific Tea Company, a New Jersey corporation with an office in Boston, Massachusetts on or about November 30, 1959. After that date, the business formerly carried on by The Great Atlantic and Pacific Tea Company was carried on by The Great Atlantic & Pacific Tea Company, Inc. Wherever reference is made to "A&P" in this indictment such reference shall be deemed to mean The Great Atlantic and Pacific Tea Company prior to approximately November 30, 1959 and thereafter The Great Atlantic & Pacific Tea Company, Inc. A&P is a nationwide chain of food stores with gross annual sales in excess of 5 billion dollars annually. A&P's sales of milk in the Greater Boston area constitute approximately 8% of total sales of milk in said area.

VIII

DEFINITIONS AND TRADE AND COMMERCE

12. The allegations contained in paragraphs 2 through 5 of this indictment are here realleged with the same force and effect as though set forth in full.

IX

CO-CONSPIRATORS

13. Various persons not made defendants herein participated as co-conspirators with the defendants in the offense charged herein and performed acts and made statements in furtherance of said offense.

X

OFFENSE CHARGED

COMBINATION AND CONSPIRACY IN RESTRAINT OF TRADE

14. Beginning at least as early as 1956, and continuing thereafter until at least January 1960, the exact dates being to the grand jurors unknown, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and

commerce in milk in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §1), commonly known as the Sherman Act.

15. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among defendants and co-conspirators, the substantial terms of which were that:

- a. A&P would sell milk to consumers in the Greater Boston area at prices set by Hood;
- b. Hood would set the prices at which A&P would sell milk to consumers in the Greater Boston area at levels designed to eliminate the sale of milk by jug handlers in said area;
- c. Hood would lower its wholesale prices on milk to designated ordinary retailers in the Greater Boston area and would persuade and induce said retailers to sell milk to consumers at prices designed to eliminate the sale of milk by jug handlers in the Greater Boston area;
- d. Hood would coerce, persuade and induce other handlers of milk in the Greater Boston area to lower their wholesale prices on milk to designated ordinary retailers in the Greater Boston area and to persuade and induce said retailers to sell milk to consumers at prices designed to eliminate the sale of milk by jug handlers in the Greater Boston area;
- e. Hood would sell milk to A&P and to designated ordinary retailers in the Greater Boston area at prices below Hood's costs; and
- f. Hood would attempt to coerce, persuade and induce jug handlers to raise their milk prices to consumers in the Greater Boston area.

16. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which, as hereinabove alleged, they conspired and agreed to do.

XI

EFFECTS, JURISDICTION AND VENUE

17. The allegations contained in paragraphs 8 and 9 of this indictment are here realleged with the same force and effect as though set forth in full.

COUNT THREE

18. The allegations contained in paragraph 1 through 5, 11 and 13 of this indictment are here realleged with the same force and effect as though set forth in full.

XII

OFFENSE CHARGED

Combination and Conspiracy to Monopolize

19. Beginning at least as early as 1956, and continuing thereafter until at least January 1960, the exact dates being to the grand jurors unknown, the defendants and co-conspirators engaged in a combination and conspiracy to monopolize the aforesaid interstate trade and commerce in milk in violation of Section 2 of the Act of Congress of July 2, 1890 (15 U.S.C. § 2), commonly known as the Sherman Act.

20. The allegations contained in paragraphs 15 and 16 of this indictment are here realleged with the same force and effect as though set forth in full.

XIII

EFFECTS, JURISDICTION AND VENUE

21. The allegations contained in paragraphs 8 and 9 of this indictment are here realleged with the same force and effect as though set forth in full.

COUNT FOUR

22. The allegations contained in paragraphs 1 through 5 of this indictment are here realleged with the same force and effect as though set forth in full.

XIV

OFFENSE CHARGED

Price Discrimination

23. Beginning on or about February 23, 1937 and continuing thereafter until at least January 1960, Hood, while engaged in the aforesaid interstate commerce in milk and in the course of said commerce, and A&P were parties to a secret agreement which was a continuing transaction of sale of milk from Hood to A&P for resale in the Greater Boston area, the terms of which were that Hood agreed to pay secret rebates on all purchases of milk by A&P in consideration of A&P continuing to purchase milk from Hood. The said secret agreement discriminated against competitors of A&P in that it granted secret rebates to A&P over and above any rebates available to competitors of A&P on sales of milk of like grade, quality and quantity at the time sales of milk were made by Hood to A&P and to A&P's competitors. Hood knew during the life of said agreement, and while sales of milk of like grade, quality and quantity were being made by Hood to A&P and to competitors of A&P, that the said agreement discriminated as aforesaid. The said agreement was in violation of Section 3 of the Act of Congress of June 19, 1936 (15 U.S.C. § 13a), as amended, commonly known as the Robinson-Patman Act.

24. Pursuant to and in effectuation of the aforesaid offense, Hood made numerous sales of milk to A&P in 1958 and in 1959 at prices below Hood's costs.

XV

EFFECTS

25. The effects of the aforesaid offense, among others, have been:

- a. To deprive competitors of A&P of the opportunity to compete with A&P on equal terms in the sale of milk to consumers in the Greater Boston area;

- b. To deprive competitors of Hood of the opportunity to compete with Hood on equal terms in the sale of milk to A&P for resale to consumers in the Greater Boston area;
- c. To cause milk price wars for extended periods of time in the Greater Boston market;
- d. To cause other milk handlers and the jug handlers to suffer severe financial losses in order to compete against below-cost milk prices financed by Hood's resources;
- e. To restrict the sale of milk in glass gallon containers in the Greater Boston market.

XVI

JURISDICTION AND VENUE

26. The aforesaid offense was carried out within the District of Massachusetts within the five years preceding the return of this indictment.

COUNT FIVE

27. The allegations contained in paragraphs 1 through 5 of this indictment are here realleged with the same force and effect as though set forth in full.

OFFENSE CHARGED

Price Discrimination

28. Beginning on or about March 6, 1958 and continuing through at least October, 1958, Hood, while engaged in the aforesaid interstate commerce in milk, and in the course of said commerce, sold milk to designated ordinary retailers for resale in the Greater Boston area at discounts which discriminated against competitors of these designated ordinary retailers in that said discounts were over and above any discounts available at the time to said competitors on sales of milk of like grade, quality and quantity. Hood knew that such sales

discriminated as aforesaid. The designated ordinary retailers who received the discriminatory discounts from Hood were located within designated areas surrounding each Cumberland Farms' store in the Greater Boston area and said designated areas were depicted on maps. Hood's sales at these discriminatory discounts were part of a single continuing course of conduct in violation of Section 3 of the Act of Congress of June 19, 1936 (15 U.S.C. § 13a), as amended, commonly known as the Robinson-Patman Act.

29. Pursuant to and in effectuation of the aforesaid offense Hood made numerous sales of milk to designated ordinary retailers in 1958 at prices below Hood's costs.

XVII

EFFECTS

30. The effects of the aforesaid offense, among others, have been:

- a. To deprive competitors of the designated ordinary retailers of the opportunity to compete with the designated ordinary retailers on equal terms in the sale of milk to consumers in the Greater Boston area.
- b. To cause milk price wars for extended periods of time in the Greater Boston market;
- c. To cause other milk handlers and the jug handlers to suffer severe financial losses in order to compete against below-cost milk prices financed by Hood's resources;
- d. To restrict the sale of milk in glass gallon containers in the Greater Boston market.

XVIII

JURISDICTION AND VENUE

31. The aforesaid offense was carried out within the District of Massachusetts within the five years preceding the return of this indictment.

COUNT SIX

32. The allegations contained in paragraph 1 through 5 of this indictment are here realleged with the same force and effect as though set forth in full.

OFFENSE CHARGED

Price Discrimination

33. Beginning on or about March 6, 1958 and continuing at least through October, 1958, Hood, while engaged in the aforesaid interstate commerce in milk, and in the course of said commerce, sold milk in designated areas, depicted on maps, surrounding each Cumberland Farms' store in the Greater Boston area at prices lower than those exacted by Hood elsewhere in the Greater Boston area for the purpose of eliminating Cumberland Farms as a competitor and of destroying competition in said designated areas, in violation of Section 3 of the Act of Congress of June 19, 1936 (15 U.S.C. § 13a), as amended, commonly known as the Robinson-Patman Act.

34. Pursuant to and in effectuation of the aforesaid offense Hood did those things described in subparagraphs b through f of paragraph 7 of this indictment and the allegations contained in those subparagraphs are here realleged with the same force and effect as though set forth in full.

XIX

EFFECTS, JURISDICTION AND VENUE

35. The allegations contained in paragraphs 8 and 9 are here realleged with the same force and effect as though set

forth in full.

Dated:

A TRUE BILL:

Foreman

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