

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
UTAH

UTAH PIE COMPANY, a Utah Corporation,  
Plaintiff,  
vs.

CARNATION COMPANY, a Delaware Corpora-  
tion, PET MILK COMPANY, a Delaware  
Corporation, and CONTINENTAL BAKING  
COMPANY, a Delaware Corporation,  
Defendants.

) C O M P L A I N T  
) ~~CIVIL No. C-148-61~~  
) (FOR DAMAGES AND  
) INJUNCTIVE RELIEF UNDER  
) THE SHERMAN AND CLAYTON  
) ANTITRUST LAWS OF THE  
) UNITED STATES)  
) (Jury Demanded)

The above named plaintiff complains of the above named  
defendants and alleges as follows:

1. This complaint is filed and these proceedings are  
instituted against the defendants under Sections 15 and 26 of  
Title 15 U.S.C.A.

2. The plaintiff is a corporation duly organized and  
existing under the laws of the State of Utah with its principal  
place of business in Salt Lake City, Utah. It is engaged primar-  
ily in the manufacture of frozen pies in the State of Utah. It  
markets its products through distributors in Utah, Idaho,  
Washington, Oregon and Wyoming. It competes in the State of Utah  
with the defendants. It and its predecessors in interest have been  
engaged in the pie business for about thirty years.

3. The defendant Carnation Company is a Delaware corpora-  
tion organized and existing under the laws of the State of  
Delaware and has its principal place of business for the sale and  
distribution of frozen pies in Los Angeles, California and markets  
its frozen pies under the name and label of "Simple Simon".

4. The defendant Pet Milk Company is a corporation  
organized and existing under the laws of the State of Delaware  
with its principal place of business for the sale and distribution  
of its frozen pies in Fresno, California and markets its frozen

*Summons Issued 7-8-61 by attorney*



1 pies under the name and label of "Pet Ritz" and "Swiss Miss".

2 5. The defendant Continental Baking Company is a corpora-  
3 tion organized and existing under the laws of the State of  
4 Delaware with its principal place of business in New York City,  
5 New York but causes its frozen pies to be manufactured and dis-  
6 tributed out of Watsonville, California under the name and label  
7 of "Morton Pies".

8 6. The defendants transact business in the State of Utah  
9 by the sale of frozen pies in interstate commerce to distributors  
10 for resale. They manufacture their frozen pies under the afore-  
11 said names and labels at the places of business as set forth above  
12 and market their frozen pies throughout the western United States.  
13 None of the pies sold by defendants are manufactured in Utah but  
14 are shipped into Utah by trucks or by common carrier for resale  
15 in the State of Utah at prices agreed upon between defendants and  
16 their respective distributors and among the defendants themselves.  
17 The price discriminations hereinafter alleged involve a lower  
18 price on the frozen pies that are shipped from the various points  
19 in California to Salt Lake City, Utah by said defendants than that  
20 charged in areas where plaintiff does not distribute. The dis-  
21 criminatory price is made by agreement among the three defendants  
22 and by each defendant and its Utah distributors separately in  
23 advance of the interstate shipment.

24 7. Beginning at a period of time unknown to plaintiff  
25 but believed to be in or about June of 1959, the defendants have  
26 combined and conspired to restrain interstate commerce by impair-  
27 ing and destroying the competition of plaintiff, which is the only  
28 small, independent frozen pie manufacturer and distributor in the  
29 State of Utah. It was the intent and purpose of this combination  
30 and conspiracy to weaken the capital structure of the plaintiff  
31 and to destroy its profits to the end that its competition would  
32



1 be eliminated. This combination and conspiracy and the means and  
2 methods used to effectuate it, as hereinafter stated, were con-  
3 trary to Sections 1 and 2 of the Sherman Act (15 U.S.C.A. 1 and  
4 2) and Section 2(a) of the Clayton Act (15 U.S.C.A. 13(a)). By  
5 reason of the aforesaid violations, defendants have substantially  
6 lessened, limited and restrained competition in the State of Utah.

7 8. The plan of defendants to destroy the competition of  
8 plaintiff was pursued by defendants from its inception to the  
9 present time by means of the following things and acts which  
10 defendants have done:

11 a. Defendants have made price discriminations in the  
12 distribution of their frozen pies, maintaining a high and profit-  
13 able price in their operations outside the State of Utah and  
14 cutting their prices on sales in the State of Utah below their  
15 cost of production and cost of distribution;

16 b. Defendants have subsidized their sales below  
17 cost in the State of Utah from their profitable interstate opera-  
18 tions in other western states;

19 c. Defendants have kept their prices high in western  
20 states other than the State of Utah by means of agreements among  
21 themselves covering said states;

22 d. Defendants have kept their prices low and below  
23 cost in the State of Utah by means of price maintenance agreements  
24 between themselves and their respective distributors to be effec-  
25 tive within the State of Utah;

26 e. Defendants have sold their products at unreasonably  
27 low prices in the State of Utah for the purpose of destroying the  
28 competition of the plaintiff;

29 f. Defendants have sold their products at unreason-  
30 ably low prices in the State of Utah for the purpose of eliminating  
31 plaintiff as a competitor while subsidizing their losses from sales  
32



1 at a higher price in other western states of the United States;

2 g. Defendants have maintained their low prices in  
3 the State of Utah, sometimes below the costs of production,  
4 during a period of rising costs between June of 1959 and August  
5 of 1961 and raised their prices in neighboring states to Utah to  
6 compensate for their increased costs, thus compelling plaintiff to  
7 absorb all increased costs without a compensating increase in  
8 price.

9 9. The acts mentioned in the paragraph next preceding  
10 were intended by each and every defendant to destroy the competi-  
11 tion of plaintiff.

12 10. Unless the defendants are restrained by this Court  
13 from their two-price policy as hereinabove alleged, their price  
14 fixing and price discriminations, their subsidizing the below  
15 cost sales in Utah by higher prices in states where plaintiff  
16 does not distribute, the plaintiff will be forced out of business  
17 or will be compelled to salvage what it can by forced sale of its  
18 business.

19 11. By reason of the aforesaid combination and conspiracy  
20 in restraint of trade, the business of plaintiff has been serious-  
21 ly impaired and damaged and the plaintiff has suffered loss of  
22 profits and loss to its good will. Plaintiff's damage within the  
23 four years immediately preceding the filing of this complaint  
24 as a result of defendants' violations of the antitrust laws was  
25 approximately \$250,000.00.

26 WHEREFORE, the plaintiff prays as follows:

27 1. That plaintiff receive with interest as damages for  
28 the injury to its business the sum of \$250,000.00 trebled, and  
29 the Court award a reasonable attorneys' fee in accordance with  
30 Section 4 of the Clayton Act;

31 2. That defendants be enjoined and restrained from each  
32

1 of the unlawful practices herein alleged;

2 3. That the aforesaid plan, combination and conspiracy  
3 in restraint of interstate trade and commerce be adjudged and  
4 decreed to be unlawful, and be enjoined;

5 4. That the Court issue a preliminary injunction res-  
6 training the defendants from their practice of discriminatory  
7 pricing;

8 5. That plaintiff recover its costs herein; and,

9 6. That the plaintiff have such other and further relief  
10 as this Court may deem proper.

11 KING AND HUGHES

12  
13 By

Robert W. Hughes  
Robert W. Hughes  
2121 South State Street  
Salt Lake City, Utah

14  
15  
16 Of Counsel:

17 Joseph L. Alioto  
18 Joseph L. Alioto  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32