

Utah Pie Company
vs.
Continental Baking Company

By:

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Background Info.

- Utah Pie Company is a small, family run business located in Salt Lake City
- They have been producing fresh pies locally for many years.
- In 1957, Utah Pie Company enters the frozen pie market and competes with Continental Baking Company, Pet Milk Company, and Carnation Milk Company.

Background Info. (cont)

- These 3 large firms are nationwide distributors of produce, including frozen pies, to American grocers.
- Utah Pie was able to undercut its national competitors' prices due to having their manufacturing plant locally.
- In response to Utah Pie's lower prices, the competitors also lowered their prices.

The Issues

- The issue of this case is that Continental Baking Co. priced its frozen pies at below-cost prices in the Salt Lake City market (where it faced its rival Utah Pie), while charging a higher price elsewhere (where Utah Pie is absent).
- The pies are of “same grade and quality” in both Salt Lake City and elsewhere.

The Issues (cont)

- Is this a form of primary-line discrimination – a price discrimination by a firm competing with the harmed firm?
- Are the larger companies selling pies at illegally discounted prices in the Salt Lake City market?

The Case

- The period of the lawsuit covers 1958-1961
- The plaintiff, Utah Pie, built a new plant in SLC in 1958
- While its share of the SLC market may have decreased slightly due to its competitors, Utah Pie's sales volume steadily increased, and its financial position improved.

The Case: Continental Baking

- Continental was a substantial factor in the market in 1957.
- In late 1960, it worked out a co-packing arrangement in California by which fruit would be processed directly from the trees into the finished pie without large intermediate packaging, storing and shipping expenses.
- June 1961 it took the initial steps which are the main reasons for petitioner's complaint:
 - For the last two weeks of June it offered its 22-oz frozen apple pies in the Utah area at \$2.85 per dozen, while selling the same pie at substantially higher prices in other markets.

Continental Baking (cont)

- At these new prices, Continental also sold pies to American Grocers in Pocatello, Idaho, American Food Stores in Ogden, Utah, and Safeway.
- Utah responded immediately by reducing its price on all of its apple pies to \$2.75 per dozen.
- Continental refused Safeway's request to match Utah's price, but renewed its offer at the same prices effective July 31 for another two-week period.

Continental Baking (cont)

- September 8, 1961 Utah filed suit for price discrimination.
- Continental's total sales of frozen pies increased from 3,350 dozen in 1960 to 18,000 dozen in 1961; its market share increased from 1.8% in 1960 to 8.3% in 1961.

Conclusion

- The original ruling was in favor of the Utah Pie, the Court of Appeal reversed the decision, which was, in turn, reversed again by the SC, ruling that they were in fact, in violation of the Clayton Act, which was modified by the Robinson-Patten Act
 - the Act prohibits sales that discriminate in price on the sale of goods to equally-situated distributors when the effect of such sales is to reduce competition
- The Court of Appeals concluded that Continental's conduct had only minimal effect, that it had not injured or weakened Utah Pie as a competitor, that it had not substantially lessened competition and that there was no reasonable possibility that it would do so in the future
- However, the SC argued that the CoA's decision rested on the fact that Utah's sales volume continued to climb in 1961 and on the court's own factual conclusion that Utah was not deprived of any pie business which it might have otherwise might have had
- This aspect failed to acknowledge the fact that Continental's discriminatory below-cost price caused Utah Pie to reduce its price

Conclusion

- The jury could have concluded that had Utah not lowered its price, Continental would have continued it, that Safeway would have continued to buy from Continental.
- The jury could also have reasonably concluded that a competitor who is forced to reduce its price to a new all time low in a market of declining prices will in time feel the financial pinch and will be a less effective competitive force.
- What about the consequences to others in the market who had to compete with Continental's \$2.85 price and Utah's \$2.75 price? Although they accounted for 91% of the market, there were 9 other sellers that made up the rest of the market
- SC felt there was enough information to find Continental in violation of 2 (a) of the Clayton Act, however, the dissent opinion was that the SC had read the Robinson-Patman Act as protecting competitors, instead of competition. "Lower prices are the hallmark of intensified competition."