

1 Peter H. Flournoy
2 Richard P. Sax
3 Antitrust Division, Department of Justice
4 1307 United States Court House
5 Los Angeles, California 90012
6 Telephone: 688-2500

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8 Attorneys for the Plaintiff

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 FRITO-LAY, INC.; BBF
15 LIQUIDATING, INC., GRANNY GOOSE
16 FOODS, INC., and PET
17 INCORPORATED,

18 Defendants.

Civil No. 70-1175 FW

Filed: May 26, 1970

(15 U.S.C. §§ 4 and 15A)
(31 U.S.C. §§ 231-233)

(Antitrust Injunction
and Money Damages)

19 COMPLAINT

20 The United States of America, plaintiff herein, by its
21 attorneys, brings this action against the defendants named
22 herein in three counts. As a first claim, the United States
23 of America brings this suit under Section 4 of the Sherman
24 Act (15 U.S.C. § 4), in order to prevent and restrain con-
25 tinuing violation by the defendants, as hereinafter alleged,
26 of Section 1 of said Act (15 U.S.C. § 1) (Count One). As a
27 second claim the United States of America in its capacity as
28 purchaser of snack foods for use by Federal agencies, brings
29 this suit under Section 4A of the Clayton Act (15 U.S.C. § 15A)
30 to recover its actual damages (Count Two), and as a third claim,
31 alternatively, under the False Claims Act (31 U.S.C. §§ 231-233)
32 for double the amount of damages sustained, plus forfeitures
(Count Three).

1 COUNT ONE

2 I

3 JURISDICTION AND VENUE

4 1. As a first claim, the United States of America brings
5 this suit under Section 4 of the Act of Congress of July 2,
6 1890 (15 U.S.C. § 4), as amended, commonly known as the Sherman
7 Act, in order to prevent and restrain continuing violations by
8 the defendants, as hereinafter alleged, of Section 1 of the
9 Sherman Act (15 U.S.C. § 1).

10 2. Each of the defendants maintains an office, transacts
11 business and is found within the Central District of California.

12 II

13 THE DEFENDANTS

14 3. Frito-Lay, Inc. (hereinafter referred to as Frito) is
15 hereby named a defendant herein. Frito is a corporation organized
16 in 1965 under the laws of the State of Delaware as Flico Properties,
17 Inc. and during the same year changed its name to Frito-Lay, Inc.
18 Its principal place of business is located in Dallas, Texas.
19 Commencing sometime prior to 1959, the snack foods business of
20 Frito in the subject area was carried on by a California corpora-
21 tion called "The Frito Company (Western Division)", which was
22 a wholly-owned subsidiary of The Frito Company, a Texas corpora-
23 tion. In 1961 the Frito Company (Western Division) was merged
24 into its parent company and liquidated. In September 1961, The
25 Frito Company merged with H. W. Lay & Company, Inc. to form
26 Frito-Lay, Inc., a Texas corporation. In June 1965, the assets
27 of Frito-Lay, Inc., a Texas corporation, were acquired by the
28 Pepsi-Cola Company, which transferred the assets to Flico
29 Properties, Inc. Wherever hereinafter used, the term Frito
30 refers to Frito-Lay, Inc. or Flico Properties, Inc., a Delaware
31

1 corporation, Frito-Lay, Inc., a Texas corporation, and The Frito
2 Company and The Frito Company (Western Division), during the
3 applicable periods. During the period of time covered by this
4 complaint, Frito has been engaged in the business of producing
5 and selling snack foods in the subject area.

6 . 4. BBF Liquidating, Inc. (hereinafter referred to as BBF)
7 is hereby named a defendant herein. BBF was a corporation organized
8 as Bell Brand Foods, Ltd. in 1946 under the laws of the State of
9 California. On or about November 27, 1968, Bell Brand Foods, Ltd.
10 sold substantially all of its assets, used in the production and
11 sale of snack foods in the subject area, to Sunshine Biscuits, Inc.,
12 which then immediately transferred the assets to Nubell, Inc., a
13 corporation organized on or about November 1, 1968 under the laws
14 of the State of Delaware. On December 16, 1968, Bell Brand
15 Foods, Ltd. changed its name to BBF Liquidating, Inc. which
16 thereafter was dissolved on January 28, 1969. Wherever here-
17 inafter used, the term BBF refers to Bell Brand Foods, Ltd.,
18 and BBF Liquidating, Inc., during the applicable periods.
19 During the period covered by this complaint, ending on or
20 about November 27, 1968, the corporation which subsequently
21 was dissolved as BBF Liquidating, Inc. was engaged in the
22 business of producing and selling snack foods in the subject
23 area.

24 5. Granny Goose Foods, Inc. (hereinafter referred to
25 as Goose), is hereby named a defendant herein. Goose is a
26 corporation organized on or about March 15, 1956, as Granny
27 Goose Foods of Fresno, Inc. under the laws of the State of
28 California. On or about April 12, 1962, Granny Goose Foods
29 of Fresno, Inc. changed its name to Granny Goose Foods, Inc.
30 Wherever hereinafter used, the term Goose refers to Granny
31 Goose Foods of Fresno, Inc. for the period prior to April 12, 1962,
32

1 and thereafter to Granny Goose Foods, Inc. During the period
2 of time covered by this complaint, Goose engaged in the business
3 of producing and selling snack foods in the subject area.

4 6. Pet Incorporated (hereinafter referred to as Pet) is
5 hereby named a defendant herein. Pet is a corporation organized
6 in 1925 under the laws of the State of Delaware as Pet Milk
7 Company, which in 1966 changed its name to Pet Incorporated.
8 Its principal place of business is located in St. Louis,
9 Missouri. Pet conducts its business of producing and selling
10 snack foods through its Snack Foods Division with its principal
11 place of business in Anaheim, California. Commencing sometime
12 prior to 1959, the snack foods business of Pet in the subject
13 area was carried on by Scudder Food Products, Inc., a California
14 corporation, which in 1961 changed its name to Laura Scudder's.
15 In 1962, all of the stock of Laura Scudder's was acquired by
16 said Pet Milk Company, and Laura Scudder's was dissolved in
17 1963. Wherever hereinafter used, the term Pet refers to Pet
18 Incorporated and Pet Milk Company, a Delaware corporation, and
19 Laura Scudder's and Scudder Food Products, Inc., a California
20 corporation, during applicable periods. During the period
21 covered by this complaint, Pet engaged in the business of
22 producing and selling snack foods in the subject area.

23 III

24 CO-CONSPIRATORS

25 7. Various persons, corporations, and associations not
26 made defendants herein have participated in the conspiracy
27 alleged herein and have done acts and made statements in
28 furtherance thereof.

29 IV

30 DEFINITIONS

31 8. As used herein, the term:
32

1 (a) "Subject area" means the States of
2 California, Arizona and Nevada.

3 (b) "Snack foods" means potato chips,
4 corn chips, barbecue flavored chips,
5 and tortilla chips.

6 V

7 TRADE AND COMMERCE

8 9. Throughout the period of time covered by this complaint,
9 the corporate defendants were the principal manufacturers and
10 sellers of snack foods in the subject area. During 1968, the
11 corporate defendants had total sales of snack foods in the
12 subject area of over \$80 million. A large share of said sales
13 by the corporate defendants was made to grocery stores, delica-
14 tessens, and similar retail establishments for resale to consumers.
15 The corporate defendants also sell a substantial amount of snack
16 foods direct to consumers, such as school districts and military
17 installations. Substantial amounts of snack foods are sold by
18 defendants to the United States for resale in military commissaries
19 and post exchanges and for use by military personnel at domestic
20 bases located in the subject area and overseas bases.

21 10. During the period of time covered by this complaint,
22 substantial quantities of snack foods produced or processed
23 at plants in California by defendants BBF, Frito, Goose and
24 Pet, were shipped and sold by said defendants in interstate
25 commerce to consumers and other customers located in States
26 other than the state in which such snack foods were produced
27 and processed, including states in the subject area. During
28 the period covered by this complaint, defendant Frito also
29 shipped substantial quantities of snack foods from its producing
30 or processing plants located outside of the subject area to
31 places within said subject area.
32

1 11. During the period covered by this complaint, there
2 has been a continuous and regular flow in interstate commerce
3 of basic ingredients used in the processing of potato chips,
4 corn chips, barbecue flavored chips and tortilla chips.
5 Substantial quantities of ingredients, such as potatoes,
6 corn, salt, and oil, as well as the flexible packaging materials
7 in which the snack foods are distributed, are shipped in inter-
8 state commerce to the manufacturing plants of the defendant
9 corporations in the subject area.

10 VI

11 THE CONSPIRACY

12 12. Beginning sometime in early fall of 1959, the exact
13 date being unknown to the plaintiff, and continuing thereafter
14 up to and including the date of this complaint, the defendants
15 and co-conspirators have engaged in a combination and conspiracy
16 in unreasonable restraint of the aforesaid interstate trade and
17 commerce in snack food products in the subject area in violation
18 of Section 1 of the Act of Congress of July 2, 1890, as amended
19 (15 U.S.C. § 1), commonly known as the Sherman Act.

20 13. The alleged combination and conspiracy has consisted
21 of a continuing agreement, understanding, and concert of action
22 among the defendants and co-conspirators, the substantial terms
23 of which have been and are to raise, fix and maintain prices of
24 snack food products sold in the subject area.

25 14. For the purpose of forming and effectuating the
26 alleged combination and conspiracy, the defendants and co-
27 conspirators have done those things which, as hereinabove
28 alleged, they combined and conspired to do.

29 VII

30 EFFECTS OF THE COMBINATION AND CONSPIRACY

31 15. The effects of the aforesaid combination and conspiracy,
32

1 among other things, have been and are to unreasonably restrain
2 the aforesaid trade and commerce in the sale of snack food
3 products within the subject area by:

4 (a) Raising, fixing, maintaining and
5 stabilizing retail prices for snack
6 food products.

7 (b) Suppressing and eliminating price
8 competition in the sale of snack
9 foods among the corporate defendants
10 in the subject area.

11 (c) Suppressing and eliminating the oppor-
12 tunity for consumers and customers of
13 the corporate defendants to purchase
14 snack food products within the subject
15 area at competitive prices.

16 16. WHEREFORE, plaintiff prays:

17 (a) That the Court adjudge and decree that the
18 defendants, and each of them, have engaged in an unlawful
19 combination and conspiracy in unreasonable restraint of the
20 aforesaid interstate trade and commerce in violation of Section
21 1 of the Sherman Act.

22 (b) That each of the defendants, its successors,
23 assignees, subsidiaries and transferees, and the respective
24 officers, directors, agents, and employees thereof, and all
25 other persons acting or claiming to act on behalf thereof, be
26 perpetually enjoined and restrained from, in any manner,
27 directly or indirectly:

28 (i) Continuing, maintaining, or renewing
29 the aforesaid combination and conspiracy
30 and from engaging in any other combination,
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1 conspiracy, agreement, understanding,
2 or concert of action having a similar
3 purpose or effect and from adopting or
4 following any practice, plan, program,
5 or device having a similar purpose or
6 effect.

7 (ii) Entering into any agreement,
8 arrangement, concerted activity, or
9 understanding with any other producer,
10 distributor or seller of snack foods, or
11 with any association of said producers,
12 distributors, or sellers, in relation to
13 said product to:

14 (1) fix or adopt prices, terms,
15 or conditions of sale;

16 (2) maintain or stabilize
17 prices;

18 (3) submit noncompetitive
19 collusive, complimentary, or
20 rigged bids or quotations to
21 any customer;

22 (4) exchange information concerning
23 bids, prices, terms or conditions
24 of sale.

25 (c) That the Court order each defendant for a period
26 of five (5) years to certify in writing, through one of its
27 officers, at the time of every succeeding change in published
28 prices, "estimating prices", terms, or conditions of sale of
29 snack foods, that said change was independently arrived at by
30 said defendant and was not the result of any agreement or under-
31 standing with any competitor; and further that each defendant
32

1 retain in its files the aforesaid certifications which shall
2 be made available to plaintiff for inspection upon reasonable
3 written demand.

4 (d) That the Court order each defendant to annex to
5 every sealed bid or quotation on snack foods, for a period of
6 five (5) years from the date of entry of a final judgment herein,
7 a written certification by an officer of said defendant, or by
8 the official of said defendant having authority to determine the
9 bid or quotation involved, that said bid or quotation was not
10 the result of any agreement, understanding, or communication
11 between the defendant and any of its competitors.

12 (e) That plaintiff have such other, further, and
13 different relief as the Court may deem just and proper in the
14 premises.

15 (f) That plaintiff recover the costs of this
16 suit.

17 COUNT TWO

18 17. As an alternative to the claim alleged in Count
19 Three, the United States of America, in its aforesaid capacity
20 as purchaser of snack foods by Federal agencies, brings this
21 suit against the defendants under Section 4A of the Act of
22 Congress of October 15, 1914, as amended (15 U.S.C. § 15A),
23 commonly known as the Clayton Act, to recover damages which
24 it has sustained due to violations by defendants of Section 1,
25 of the Sherman Act (15 U.S.C. § 1).

26 18. The allegations contained in paragraphs 2 through
27 15 of this complaint are here realleged with the same force
28 and effect as though set forth in full.

29 19. Plaintiff had no knowledge of the said combination
30 and conspiracy, or of any facts which might have led to the
31 discovery thereof until August 1968, and it first became
32

1 fully aware of the scope of the unlawful conspiracy during
2 the course of the grand jury proceedings which culminated
3 in the return of an indictment in this District against the
4 defendants in May 1970. It could not have uncovered the
5 conspiracy at an earlier date by the exercise of due diligence,
6 inasmuch as the unlawful conspiracy had been fraudulently
7 concealed by defendants.

8 20. As a result of the illegal combination and conspiracy
9 alleged herein, the plaintiff, United States of America, has
10 been injured and financially damaged by defendants in an amount
11 which is presently undetermined.

12 21. WHEREFORE, the United States of America:

13 (a) Prays that the herein alleged combination and
14 conspiracy among defendants be adjudged and decreed to be in
15 unreasonable restraint of interstate trade and commerce and in
16 violation of Section 1 of the Sherman Act.

17 (b) Demands judgment against defendants for the
18 damages suffered by it due to defendants' violation of the
19 antitrust laws, as provided for in Section 4A of the Clayton
20 Act (15 U.S.C. § 15A), or some lesser amount to the extent that
21 it has recovery under Count Three hereof, together with such
22 interest thereon as is permitted by law and the costs of this
23 suit.

24 (c) Prays that it recover such other amounts as
25 the Court shall deem just.

26 COUNT THREE

27 22. As an alternative to the claim alleged in Count Two,
28 the United States of America in its capacity as purchaser of
29 snack foods for Federal agencies, brings this suit under §§ 3490,
30 3491, 3492, and 5438 of the Revised Statutes (31 U.S.C. §§ 231-233),
31 commonly known as the False Claims Act.
32

1 23. The allegations contained in paragraphs 2 through
2 6 are here realleged with the same force and effect as though
3 set forth in full.

4 24. Inasmuch as all defendants are corporations, no
5 defendant is in the military or naval forces of the United
6 States, or in the militia called into or actually employed
7 in the service of the United States.

8 25. The acts alleged in this complaint to have been done
9 by each of the defendants were authorized, ordered, or done
10 by the officers, agents, employees, or representatives of each
11 defendant while actively engaged in the management, direction,
12 or control of its affairs.

13 26. The allegations contained in paragraphs 7 through
14 14 are here realleged with the same force and effect as though
15 set forth in full.

16 27. Pursuant to said combination and conspiracy, and as
17 a result of the acts done in furtherance thereof, defendants
18 have made sales and have received payments for snack foods
19 on the basis of bids and quotations which they submitted and
20 which they falsely or fraudulently represented to be bona
21 fide, independent, competitive, and not the product of any
22 collusion or agreement between the bidders, and the prices of
23 which bids they further falsely or fraudulently represented
24 to be nonnal, reasonable and competitive whereas, in fact-
25 known to defendants but unknown to plaintiff, the said bids
26 were sham and collusive and not the result of open competition,
27 and prices therefor were unreasonable, arbitrary, and non-
28 competitive.

29 28. With respect to each such contract awarded for the
30 supply of snack foods during the aforesaid period of the
31 conspiracy, the defendant to which such contract was awarded
32

1 presented and/or caused to be presented to plaintiff
2 for payment or approval by it numerous claims, knowing
3 such claims to be false, fictitious, or fraudulent in
4 that such claims were based on a contract which had
5 been falsely or fraudulently procured by reason of
6 the aforesaid bidding practices.

7 29. As a result of the presentment to it of the
8 aforesaid false or fraudulent claims, and without
9 knowledge thereof, plaintiff has paid the false
10 or fraudulent claims to defendants.

11 30. As a result of the illegal combination
12 and conspiracy and the defendants' acts in furtherance
13 thereof, plaintiff has been compelled to pay substantially
14 higher prices for snack foods than would have been the
15 case but for the illegal conduct complained of herein,
16 and has been financially damaged by defendants, the
17 amount of which is presently undetermined:
18

19 31. WHEREFORE, the United States of America:

20 (a) Demands judgment against defendants for
21 Two Thousand Dollars (\$2,000) for the said
22 conspiracy, for double the amount of the
23 damages it has sustained, and for such
24 other forfeitures as are allowable by
25 law, as provided in Sections 3490, 3491,
26 3492 and 5438 of the Revised Statutes
27 (31 U.S.C. §§ 231-233) together with
28 interest thereon and the costs of this
29 suit; and

30 (b) Prays that it recover such other
31
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1 amounts and have such other and further
2 relief as the Court shall deem just.

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4 Dated: _____

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6 _____
7 JOHN N. MITCHELL
Attorney General

_____ PETER H. FLOURNOY

8
9 _____
10 RICHARD W. McLAREN
Assistant Attorney General

_____ RICHARD P. SAX
Attorneys, Department of Justice

11
12 _____
13 BADDIA J. RASHID

14
15 _____
16 ROBERT B. HUMMEL

17
18 _____
19 RAYMOND W. PHILIPPS

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21 _____
22 JAMES J. COYLE

23
24 Attorneys, Department of Justice
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