

Syllabus.

FEDERAL TRADE COMMISSION

v.

AMERICAN MUTUAL SEED COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 533—January 8, 1921.

SYLLABUS.

Where a corporation dealing in farm and grass seeds, chiefly on the mail-order plan, with the effect of misleading the public and embarrassing competitors in the conduct of their business,

- (a) Falsely advertised that all its seed was of high germination;
- (b) Advertised that all its seed was thoroughly recleaned, and free from dirt and weed seeds, especially the seed of noxious weeds; that it had installed in its plant cleaning machinery and equipment of standard design, by the proper and careful use of which weed seed, dirt, and other foreign matter might be removed from seed so that it would meet the requirements of pure-seed laws; the fact being that such seed did contain considerable quantities of weed seed, including noxious weeds, as well as dirt and other foreign matter, and had not been cleaned of seed impurities;
- (c) Advertised its seed-testing laboratory, together with a picture thereof, and made the false and misleading claims with reference to the testing of its seed that (1) every lot of seed sent out was subject to a careful purity and germination test; (2) every bag must come up to its standard of purity and germination before being shipped; (3) a purchaser knew before sowing its seed that it would produce results, and there was no guesswork about such seed; and (4) its seed-testing laboratory was in charge of an expert seed analyst;
- (d) Advertised that every bag of seed shipped was tagged to show the purity and germination thereof and that full information was given with every bag, which claims were false and misleading;
- (e) Advertised three grades of seed, namely, "Pinnacle brand" (extra fancy), "Universal brand" (fancy), and "Economy brand" (choice), and made for these brands varying claims of excellence, the fact being that samples of each brand showed on analysis weed seed and other impurities, including in many instances the seed of noxious weeds, and notwithstanding the fact that it had established no standards of purity for its three grades, analysis of "Economy brand" showing the samples to be the equal of "Pinnacle brand";
- (f) Advertised and sold, under the brand names above set forth, clover seed of various kinds, claiming that (1) its clover seed could not be surpassed for purity, vitality, hardiness, stooling qualities, and germination; (2) its cleaning and grading machinery made it possible to furnish the best clover seed that could be bought; and (3) clover seed bought from it eliminated middlemen's profits; which claims were false and misleading;

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- (g) Advertised and sold, under the brand names above set forth, alfalfa seed, claiming that (1) its seed stock was grown exclusively for it in the Northwest and its buyers were sent into those sections, where the seed reached its highest perfection, and the entire output of the whole community was bought; (2) its standard grades of alfalfa were invariably Nebraska grown; (3) it bought no alfalfa seed after it had reached the terminal market, but secured it direct from the grower so that it knew exactly what was being furnished; and (4) it furnished seed direct from the growers; which claims were false and misleading;
- (h) Advertised and sold, under the brand names above set forth, timothy seed, claiming that (1) seed which no other seed firm could procure was offered; (2) every pound in stock was new-crop seed; (3) it was especially well situated to furnish the best seed that could be obtained at the very lowest price; and (4) while its "Pinnacle brand" was the best in the market, its "Economy brand" was choice seed and, though containing more hulled seed, germinated just as well and was especially recommended; which claims were false and misleading;
- (i) Advertised and sold certain mixtures of grass seed as alsike and timothy mixed; clover, alsike, and timothy mixed; and red clover and timothy mixed, claiming (1) a much higher proportion of alsike, much the more expensive ingredient, for its alsike and timothy mixture than was actually the case; and described said mixture as alsike and timothy, notwithstanding the generally recognized practice in the seed trade of putting first in a seed mixture the name of the ingredient which predominated; the fact being that all of the grass-seed mixtures above referred to contained large percentages of the seed of various kinds of weeds, and other impurities, and particularly the seed of noxious weeds, and that samples showed on analysis a low germinating power;
- (j) Failed to advise customers that its seed was low grade or that it mixed high-grade and low-grade seeds, or that certain of its seed contained noxious weeds, but on the contrary claimed that its seed was high grade, thoroughly recleaned, and free from noxious weed seeds and, with reference to certain varieties, was the best that could be obtained;
- (k) Used envelopes to send out samples of seed, on which envelopes were printed statements to the effect that (1) all its brands had been thoroughly recleaned; (2) its "Pinnacle brand" was equal if not superior to any other seed on the market; (3) its "Universal brand" contained no bad weed seed; and (4) its "Economy brand" contained no dangerous weed seed; all of which statements were false and misleading;
- Held*, That such acts, and each of them, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the American Mutual Seed Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the American Mutual Seed Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State, and is now, and for more than one year last past, has been, engaged in the business of dealing in seeds, including farm, garden, and flower seeds, purchasing its supply of seeds from growers and dealers in various States of the United States and causing same to be transported from points, both within and outside the State of Illinois, where same are resold by respondent upon mail orders to purchasers in the various States of the United States and the Territories thereof, and respondent causes said seeds to be transported when sold, from the State of Illinois through and into various other States of the United States and the Territories thereof.

PAR. 2. That said respondent, in the course of its business, makes use of catalogues and other advertising matter, which are given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertising matter contain certain false and misleading statements concerning the grade and quality of the seeds sold by said respondent; that among such false and misleading statements are statements to the effect that all seeds sold by respondent are sold subject to State and National test and every lot of seed is sampled and subjected to a germination and purity test before it is sent out, so that it is known just what respondent sends to its customers; that respondent has the most modern machinery for cleaning and grading seeds, which machinery not only takes out the dirt and weed seeds, but the light, small, and inferior seeds as well; that respondent's seed stock is grown exclusively for it, and that some of the largest growers of seeds send to respondent their entire crop, whereas respondent procures its supply of seeds from indiscriminate seed growers and some from other dealers of seeds who furnish to respondent the cheaper, inferior, and rejected grades of seed, and respondent has become an outlet for the marketing of low-grade, inferior seeds, which contain large quantities of seeds of noxious weeds which overrun the land in the vicinity in which the seeds are planted and are very difficult to eradicate.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, American Mutual Seed Co., charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having entered its appearance by its attorneys, Jeffrey, Campbell & Clark, and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and in behalf of the respondent before examiners of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, American Mutual Seed Co., is and was at all times herein mentioned a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State.

PAR. 2. That respondent was organized in the year 1915 and ever since has been engaged in the business of dealing in farm and grass seed at Chicago, Ill., aforesaid, purchasing its seed from growers and dealers in various States, causing the same to be transported from within and without the State of Illinois to the city of Chicago, and reselling and shipping same to purchasers in the various States and Territories of the United States, and the District of Columbia.

PAR. 3. That respondent conducts a large part of its said business upon the mail-order plan, publishing and circulating throughout the United States annual catalogues and other advertising matter containing descriptions of the various kinds and grades of seed sold by it. These catalogues are sent direct to farmers and to those desirous of purchasing seed, and they in turn send their orders to respondent company and the seed is shipped to them.

PAR. 4. That for more than one year last past, and specifically in its catalogue published for the year 1919, and other advertising matter distributed by it throughout the various States and Territories of the United States as aforesaid, respondent has made statements concerning the grade and quality of its various kinds of seed, and to effect the sale thereof, which statements are in many particulars false and misleading and calculated to mislead purchasers and prospective purchasers of such seed.

PAR. 5. That in its 1919 catalogue respondent represented and guaranteed its seed to be of high germination, and that this statement and guarantee applied to all seed sold by respondent; said statement is and was in fact untrue in that respondent's seed was and is not all of high germination, as shown by analyses made of various samples of respondent's seed by the State seed analyses of the States of Wisconsin and New York, these analyses in some cases showing germination tests as low as 48 and 72 per cent.

PAR. 6. That in its 1919 catalogue and its other advertising matter, respondent repeatedly calls attention to the alleged fact that its seed is all thoroughly recleaned and is free from dirt and weed seeds, including in particular the seed of what are declared to be noxious or dangerous weeds by the pure-seed laws of many of the States; that these statements were and are false and misleading in that respondent's said seed did in fact contain considerable quantities of weed seed, including noxious weeds, as well as dirt and other foreign matter, and had not been cleaned of all these impurities as claimed by respondent; that an officer of respondent admitted selling seed to its customers containing the seed of noxious or dangerous weeds.

PAR. 7. That respondent has installed in its plant cleaning machinery and equipment of standard design similar to that possessed by other companies in the seed business; that by the proper and careful use of this type of machinery, weed seed, dirt, and other foreign matter may be removed from seed so that it will meet the requirements of the pure-seed laws of the several States; that respondent did not properly clean all its seed sold to its customers as shown by analyses of shipments by respondent into certain States, made by the seed analysts of said States, such analyses showing the presence of dirt and of many kinds of weed seeds, including noxious or dangerous weeds, and in certain instances said noxious weeds being found in quantities sufficient to condemn the seed for sale in said States.

PAR. 8. That in its 1919 catalogue respondent calls attention to its seed-testing laboratory, showing a picture of same, and makes various claims regarding the testing of its seed, among such statements being the following: That every lot of seed it sends out is subject to a certain purity and germination test; that every bag must come up to its standard of purity and germination before being shipped; that a purchaser from it knows before sowing its seed that it will produce results, and that there is no guesswork about its seed; that its seed-testing laboratory is in charge of an expert seed analyst; that these statements were and are false and misleading in that respondent has no recognized standard of purity and germination

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for its seed, and in many cases purchased seed from other seed companies and sent said seed out to its customers without making a purity and germination test of it; that from February, 1919, until the summer of 1919, and particularly during the seed-selling season, respondent was without the services of a seed analyst and relied on a casual inspection of the seed it purchased from growers, and, where available, on the analyses furnished with the seed it purchased from other seed companies to determine the purity and germination of the seed it sold its customers; that at no time during the period when it was without the services of a seed analyst did it notify its customers or prospective customers of that fact; that during this period respondent did not know the purity or germination value of its seed, or what the results would be to its customers from sowing seed bought from it.

PAR. 9. That in its 1919 catalogue respondent states that every bag of seed shipped by it carries a tag stating the purity and germination of the seed; that the tag tells the percentage of seed that will germinate, the percentage of foreign matter and weed seed; that it gives full information with every bag of seed it sells; that these statements were and are false and misleading in that many of its shipments do not give any information as to the purity and germination of the seed, and in certain instances where such information is given it was found on analysis by the State seed analyst of the State into which shipped, that the information given did not accurately state the percentages of impurities present in the seed, and in no instance did the tag show the presence of noxious or dangerous weeds, as required by the State law.

PAR. 10. That respondent offers for sale three grades of seed, which it calls "Pinnacle brand" (extra fancy), "Universal brand" (fancy), "Economy brand" (choice); "Pinnacle brand" being the finest grade and "Economy brand" the lowest. That it claims that all its grades have been thoroughly recleaned. That in explaining the necessity of handling more than one grade of seed, respondent, in its 1919 catalogue, states its "Pinnacle brand" is "perfection itself," and is not offered in competition with ordinary grades. That in describing its brands it states that "Pinnacle brand" is carefully graded to secure seed of uniform size, and is "hand-picked seed" and the best that grows; that "Universal brand" has been thoroughly recleaned and is one of the highest grades of seed; that "Economy brand" has been thoroughly recleaned and is the equal of many grades sold as fancy and represented to be the best. That samples of each and every one of these three brands, including different varieties of seed, have been analyzed and have been found to contain weed

seed and other impurities, and in many instances the seed of certain weeds which are declared to be noxious weeds by the pure-seed laws of the various States. That respondent has established no standards of purity for its three grades, as shown by analyses of "Economy brand," which showed the samples to be the equal of "Pinnacle brand," and analyses of "Universal brand," which showed it to contain many kinds of weeds, noxious weeds, and other impurities.

PAR. 11. That respondent has advertised and sold for more than one year last past, in interstate commerce, clover seed of various kinds, including medium red or June clover, alsike clover, mammoth clover, and sweet clover of various kinds, under the same grades and brand names as hereinbefore set forth; that it states in its 1919 catalogue with reference to its clover seed: "Our clover seed can not be surpassed for purity, strong vitality, hardiness and stooling qualities, and as all our seed has been run through the scarifying machine, no clover seed can surpass it in germination"; "Our superior cleaning and grading machinery makes it possible for us to furnish you the very best clover seed that the money will buy"; "* * * when you secure it [clover] from us you get it from first hands and are not forced to pay two or three middlemen's profits." That these statements are false and misleading in that, as hereinbefore set forth, all its brands and grades do contain noxious weed seeds and other impurities. That 16 samples of clover seed shipped into the States of Wisconsin and New York by respondent were sent to the official seed analysts of said States, and were analyzed by them; that out of nine shipments into Wisconsin, eight were condemned for sale in that State because of noxious weed content in excess of that allowed by law, and the other sample showed the presence of a noxious weed; and in seven samples analyzed in New York, all contained weed seed of various kinds, in one case consisting of 22 different varieties, including in every sample, except one, the seed of weeds declared to be noxious by the pure-seed law of said State. That respondent buys a large proportion of its clover seed from other seed companies and not direct from the grower.

PAR. 12. That respondent has advertised and sold for more than one year last past in interstate commerce, alfalfa seed, under the same grades and brand names as hereinbefore set forth; that it states in its 1919 catalogue, with reference to alfalfa seed: "Our seed stock is grown exclusively for us in the Northwest; * * * we send our buyers right into those sections where alfalfa seed is grown in the highest state of perfection, and buy the entire output of the whole community, * * *"; "Our standard grades of alfalfa are invariably Nebraska grown * * *"; "We buy no alfalfa seed after

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it has reached the terminal market, but secure it direct from the grower, and then we know just what we are furnishing you". "We furnish you your seed direct from the growers." That all these statements are false and misleading in that its alfalfa seed is not grown exclusively for it in the Northwest, but such as it obtained from that section is bought by it on the open market in competition with other seed companies, and it does not buy the entire output of a community as alleged by it; that respondent's so-called standard grades of alfalfa are not all grown in Nebraska, as admitted by respondent's secretary, but, in fact, during 1919 only a very small portion of its standard grade alfalfa seed came from Nebraska; that the terminal market for alfalfa seed is Kansas City, and respondent purchased large quantities of alfalfa from dealers in said city; that it does not secure all its alfalfa direct from the growers as alleged by it, as it purchased a large proportion of its alfalfa requirements from other seed companies, and does not know in many instances where the seed is grown. That a sample of Grimm alfalfa taken from a shipment made by respondent to a purchaser in Wisconsin bore a label giving the purity as 99.5 per cent and germination 90 per cent; on analysis by the State seed analyst it was found to be 96.8 per cent purity, germination 82 per cent, and contained the seeds of weeds declared by the State law to be noxious in sufficient quantities to condemn the shipment for sale in Wisconsin; that three samples of alfalfa seed sent to prospective purchasers in the State of New York by respondent, marked "Pinnacle brand," "Universal brand," and "Economy brand," were analyzed by the State seed analyst of said State; the "Pinnacle brand" and "Economy brand" were found to contain the seed of a weed considered troublesome under the State law, and the "Universal brand" contained the seed of four different weeds, three of which are considered noxious weeds under the pure-seed law of said State.

PAR. 13. That respondent has advertised and sold for more than one year, last past in interstate commerce, timothy seed under the same grades and brand names as hereinbefore set forth; that it states in its 1919 catalogue with reference to timothy seed: "We * * * offer you seed which no other seed firm can procure * * *"; "Every pound of timothy which we have in stock is new crop seed * * * we are especially well favored to furnish you the best timothy seed to be obtained, and at the very lowest prices;" "Our 'Pinnacle brand' is the best that is in the market, our 'Economy brand' is choice seed, but contains more hulled seed * * *, but it germinates just as good, and we can especially recommend the seed to you." That all these statements are false and misleading in that

respondent is not able to obtain superior qualities of timothy seed than other seed companies; that all of respondent's timothy seed is not new crop seed, as it purchases large quantities of timothy from other seed companies, and does not know in every instance that this seed is new crop seed; that respondent does not handle exclusively the best timothy seed to be obtained; that respondent's timothy seed contains weed seed and other impurities, as shown by certain samples shipped into the States of Wisconsin and New York by respondent and analyzed by the official seed analysts of said States; one shipment into Wisconsin on analysis was shown to contain the seeds of a weed considered noxious under the State law in a quantity sufficient to condemn the sale of said seed in that State; two samples shipped into New York marked "Pinnacle brand" and "Economy brand" were analyzed; the "Pinnacle brand" contained the seeds of two weeds considered troublesome by the seed law of the State, and the "Economy brand" contained the seeds of eight different varieties of weeds, including one noxious weed and two different varieties of crop seeds.

PAR. 14. That respondent has advertised and sold for more than one year last past in interstate commerce certain mixtures of grass seed which it calls alsike and timothy mixed; clover, alsike, and timothy mixed; red clover and timothy mixed; that respondent does not sell said mixtures under the various grades and brand names under which it sells its other grass seeds, as hereinbefore set forth, but only sells one grade of these seed mixtures; that alsike clover seed costs two to four times as much as timothy seed; that respondent in its 1919 catalogue states its alsike and timothy mixed is bought in the country and contains about one-third alsike and two-thirds timothy. That said statements are false and misleading in that its alsike and timothy mixture does not contain one-third alsike seed, but, in fact, contains generally only from 5 to 8 per cent alsike; that a very small proportion, if any, of its alsike and timothy mixture is purchased in the country as represented by respondent, but that in 1919, or in preparation for the 1919 seed season, respondent purchased about 900,000 pounds of this mixture from other seed companies, of which only 15,852 pounds was high-grade seed; that said grass-seed mixtures all contained in large percentage the seed of various kinds of weeds, and other impurities, and particularly the seed of noxious weeds, often in quantities sufficient to condemn the seed for sale in the State into which it was shipped; that the secretary of respondent company admitted buying a large quantity of low-grade alsike and timothy mixed seed in 1919, which was sold to its customers, and that respondent had considerable trouble because of its quality. That 17 samples of mixed seed of the varieties named above, from shipments

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made by respondent to purchasers in the States of Wisconsin and New York, were sent to the official seed analysts of those States, and were analyzed by them; that said shipments were shown on analysis to be generally low in purity, in one case as low as 79.5 per cent, germinating power of the various crop seed comprising the mixture generally low, in one instance being 48 per cent, foreign seed of various kinds amounting to as much as 15 per cent, including various kinds of weed seed, ranging from 15 to 33 different varieties, and from 3.75 to 6 per cent inert matter; that in every sample analyzed the seed of weeds considered noxious under the pure-seed laws of the above-mentioned States were found present, in many cases in quantities beyond that allowed by the State laws, and as a consequence the shipments in such cases were condemned for sale in said States. That it is generally recognized in the seed trade in describing a seed mixture, that the kind of seed of which a preponderance is present in the mixture, shall be the name first mentioned in describing said mixture, i. e., if there is a larger percentage of timothy in a mixture than there is of alsike, said mixture would be called timothy and alsike mixed, or vice versa; that respondent calls its mixture alsike and timothy mixed, and said mixture only contains from 5 to 8 per cent alsike, as shown by analyses hereinbefore referred to.

PAR. 15. That respondent purchases large quantities of various kinds of grass seed from other seed companies, which seed is low grade in quality, and resells said seed to its customers; that respondent admits mixing high-grade seed with low-grade seed and selling said mixture as its intermediate grade; that respondent admits buying seed containing the seed of noxious weeds and reselling said seed to its customers; that respondent did not notify its customers and prospective customers that its said seed was low grade, nor that it mixed its high-grade seed and low-grade seed, nor that certain of its seed contained noxious weeds, but on the contrary claimed in its catalogue and other advertising matter that said seed was high grade, thoroughly recleaned, and free from noxious or dangerous weed seed, and with reference to certain varieties claimed that it was the best seed to be obtained anywhere.

PAR. 16. That respondent uses certain envelopes to send out samples of its seed to prospective purchasers; that said envelopes have printed on them descriptive matter, being generally the same for each variety of seed, but differing as to its several brands; that it states on these envelopes that all its brands have been carefully and thoroughly recleaned, that its "Pinnacle brand" is equal if not superior to any other seed on the market, that its "Universal brand" contains no bad weed seed, and that its "Economy brand" contains

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no dangerous weed seed; that all these statements were and are false and misleading in that analyses of samples of each of these brands including various kinds of grass seed have shown said seed not to be thoroughly and carefully re-cleaned, and to contain many kinds of weed seed, including noxious or dangerous weeds of different varieties.

PAR. 17. That respondent has on numerous occasions had its attention called by State seed analysts to the fact that its shipments of seed into certain of the States did not comply with the pure seed laws of said States, and it has on various occasions stated that it would comply with such laws.

PAR. 18. That the effect of the misrepresentations above set forth is to mislead the public and to embarrass competitors of respondent in the conduct of their business.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings of facts in paragraphs 4 to 16, inclusive, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts, with its conclusions that the respondent has violated the provisions of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, American Mutual Seed Co., its officers, agents, representatives, servants, and employees, cease and desist from:

Publishing or circulating any catalogs or other advertising or descriptive matter containing false or misleading statements as to the character or quality of the seed sold by it, and more specifically any false and misleading statements concerning:

(a) The freedom of respondent's seed from noxious weed seed or other impurities.

(b) The germinating qualities of respondent's seed.

(c) The method of testing its seed for purity and germination.

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(d) The manner in which respondent marks or tags shipments of its seed.

(e) The place where any of its seed are grown.

(f) The source from which respondent obtains its seed.

(g) Its ability to secure and offer for sale seed superior to that offered by others.

(h) The quantity or quality of the constituent elements of any of respondent's seed mixtures.

And it is further ordered, That respondent, American Mutual Seed Co., shall within 60 days from date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

WINSTED HOSIERY CO.

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