

Complaint.

FEDERAL TRADE COMMISSION

v.

ARMOUR & COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7
OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 351—May 15, 1922.

SYLLABUS.

Where a corporation engaged in the purchase of live stock and the manufacture, distribution, and sale of meat and meat products, purchased the capital stock of a competing packing plant; caused its own employees, as officers of said competitor, to convey to it the business and property thereof; caused the only experienced packing-house member of the competitor's organization to enter into an agreement not to engage in the business for a long term of years; and proceeded to serve substantially all the trade theretofore served by said competitor: with the result that existing competition between the two concerns in the sale of meat and meat products, and prospective competition in the purchase and slaughter of live stock was suppressed and destroyed, and that commerce in the purchase and sale of meat and meat products in the territory covered by the competitor was restrained, and with a tendency to create a monopoly in said corporation in a line of commerce:

Held, That such acquisition of stock, together with such agreement, conveyance of the business and property of the acquired corporation, and subsequent operation thereof, under the circumstances set forth, constituted a violation of Section 7.

COMPLAINT.

The Federal Trade Commission, having reason to believe that Armour & Company, hereinafter referred to as the respondent, has violated the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Armour & Company, is now, and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago, in said State, and engaged in the business of purchasing live stock and cattle in the various States and Territories of the United States, transporting the same to its various packing plants located in various cities of the United States, and slaughtering such live stock and cattle and thence shipping meat and meat products therefrom to purchasers thereof in the various States and Territories of the United States and the District of Columbia in direct

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competition with other persons, firms, copartnerships and corporations similarly engaged; and there has been at all times hereinafter mentioned a constant current of trade and commerce in such live stock and cattle and meat and meat products to and through the various States and Territories of the United States, the District of Columbia and foreign countries.

PAR. 2. That E. H. Stanton Company is now, and for more than three years last past has been, a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Spokane, in said State; that said corporation is now, and was at all times hereinafter mentioned, engaged in the business of purchasing live stock and cattle in the various States of the United States, transporting such live stock and cattle to its various packing plants located in various cities of the United States, and slaughtering such live stock and cattle and thence selling the meat and meat products therefrom to purchasers thereof in the various States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations similarly engaged; and there is now, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such live stock and cattle and meat and meat products to and through the various States and Territories of the United States, the District of Columbia and foreign countries.

PAR. 3. That during the year 1917, and for several years prior thereto, the E. H. Stanton Company in the conduct of its business was in direct competition with Armour & Company, the respondent herein, in the purchase of livestock and cattle and in the shipping of such livestock and cattle to their respective packing plants and in the sale of meat and meat products to purchasers thereof in the various States and Territories of the United States.

PAR. 4. That the respondent, Armour & Company, a corporation engaged in commerce, as aforesaid, did, during the year 1917, in violation of the provisions of Section 7 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," acquire the whole or a large part of the capital stock of the said E. H. Stanton Company, another corporation engaged in commerce, as aforesaid; and that the said respondent, Armour & Company, ever since the time of its acquisition of the said capital stock of said E. H. Stanton Company, has owned and still does own the whole or a large part thereof of the capital stock of said E. H. Stanton Company; and that the effect of such acquisition may be to substantially lessen competition between the E. H. Stanton Company

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and Armour & Company, respondent, or to restrain such commerce in certain sections or communities of the United States, or tend to create a monopoly in the purchase of cattle and livestock and in the sale of meat and meat products aforesaid.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Armour & Company, charging it with a violation of Section 7 of said Act. The respondent having entered its appearance by its attorneys, Messrs. Charles J. Faulkner, Jr., R. F. Feagans and H. K. Crafts, and having filed its answer herein, hearings were had before Mr. D. N. Dougherty, an examiner of the Federal Trade Commission, theretofore duly appointed, at Spokane, Washington, on May 13, 14, 15, 19 and 20, 1920, and before Mr. Gerald V. Weikert, an examiner of the Federal Trade Commission, theretofore duly appointed, at Chicago, Illinois, on October 13, 1920, at which hearings evidence was introduced in support of the allegations of said complaint and on behalf of respondent.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Armour & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at the City of Chicago, in said State, now, and at all times herein mentioned, engaged in the business of purchasing live cattle, calves, hogs, sheep and lambs, in the various states and territories of the United States, and transporting same and causing same to be transported from such states to respondent's various packing plants situated in the states of Illinois, Nebraska, Missouri and Iowa and other states, and after the slaughtering of said cattle, calves, hogs, sheep and lambs in said plants, have shipped the meat and meat products resulting therefrom, from such packing plants to and through various distributing branches situated in other states of the United States, to the purchasers of said products in the various states and territories of the United States, including the States of Washington, Idaho, Montana and Oregon.

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PAR. 2. That the E. H. Stanton Co. was a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with an authorized capitalization of \$600,000 divided into 6,000 shares of a par value of \$100 each, of which there was issued and outstanding on May 24, 1917, 5,669-2/3 shares.

PAR. 3. That the E. H. Stanton Co., described in Paragraph Two hereof, with its principal office and place of business at Spokane, Washington, was continually engaged, from 1907 up to about May 24, 1917, in the operation of a packing plant in the City of Spokane, Washington, and in buying and transporting to said plant from points in that state and other states, live cattle, calves, hogs, sheep and lambs, and in slaughtering said animals at its plant in Spokane, and in selling and shipping a full line of meat and meat products resulting therefrom, including dressed beef, hogs, sheep, calves, fresh pork cuts, beef cuts, and beef products, from its said plant at Spokane, Washington, to its various customers located in certain portions of the States of Washington, Montana, Idaho, and Oregon, the bulk of such shipments being to customers in what is known as the "Inland Empire," being the territory of which the City of Spokane is the distributing center, and which includes portions of Eastern Washington, Northwestern Idaho and Western Montana. The E. H. Stanton Co. also owned and conducted certain wholesale and retail markets in the States of Idaho and Washington, through which it marketed its products.

PAR. 4. That on or about May 24, 1917, the respondent, Armour & Co., acquired 5,386-2/3 shares of the outstanding capital stock of the E. H. Stanton Co., and later acquired the balance of such outstanding stock at approximately \$220 per share. An appraisal of the value of the stock of the E. H. Stanton Co. made by Armour & Co. showed a valuation of \$244 per share.

PAR. 5. That the respondent, Armour & Co., for several years prior to 1917 owned and conducted, among others, branch houses at the cities of Spokane, Washington; Portland, Oregon; and Butte, Montana, through which branch houses and others, Armour & Co., sold meat and meat products to its various customers in the States of Washington, Oregon, Montana and Idaho. The total sales of products sold through said branch houses for the year October 28, 1916, were in pounds and dollars as follows:

	Pounds.	Dollars.
Spokane, Washington.....	5,152,889	723,146.41
Portland, Oregon.....	4,590,468	651,101.32
Butte, Montana.....	3,858,119	655,830.16

The total sales of the Armour Co. branch house at Spokane, Washington, for the year ending October 28, 1915, were 4,151,380 pounds of products, valued at \$519,824.97. The sales for the year ending October 28, 1917, 4,438,495 pounds, valued at \$785,000.45. The principal products sold through said branch houses were such items as dressed beef, hogs, sheep, calves, fresh pork cuts, beef cuts and beef products.

PAR. 6. That at the date of acquisition of the capital stock of the E. H. Stanton Co. by Armour & Co., competition existed between said E. H. Stanton Co. and Armour & Co., particularly in the City of Spokane, and other cities, in what is known as the "Inland Empire" including the cities Coeur d'Alene, Idaho, Lewiston, Idaho, Spirit Lake, Idaho, St. Marie's, Idaho and Butte, Montana; that salesmen of both Armour & Co. and E. H. Stanton Co. solicited orders for meat and meat products from the same trade in that territory in those states in competition with each other, and that during the year 1916, and until May, 1917, the E. H. Stanton Co. sold about 75 per cent of the meat and meat products sold in the City of Spokane, Washington, and the territory around that city within a radius of 50 miles therefrom, which includes a portion of Northern Idaho commonly known as the "Coeur d'Alene country."

PAR. 7. That prior to the acquisition of the capital stock of the E. H. Stanton Co., the respondent had decided to engage in the business of purchasing and slaughtering livestock and selling the products therefrom in the Northwest territory, and either to acquire or build a packing plant in that territory for this purpose, and it caused an investigation to be made in that territory, and as a result of this investigation, the plant of the E. H. Stanton Packing Company had been reported by the respondent's agents as being in the best physical condition as well as in the best location for a prospective packing plant.

PAR. 8. That E. H. Stanton was the only practical and experienced packing-house man in the E. H. Stanton Company, and that in the contract between E. H. Stanton and Armour & Co. for the purchase of E. H. Stanton Company's stock, it was agreed that for the period of ten years E. H. Stanton "will not engage, in Montana, Idaho, Washington or Oregon, either as owner, manager or employee or stockholder, in a like or similar business to that now carried on by E. H. Stanton Company, a corporation."

PAR. 9. That from May 25, 1917, to the date of the taking of testimony in this case, in May, 1920, the respondent Armour & Co. has operated the packing plant of the E. H. Stanton Co., and, connected with the business of such operation, continuously purchased and

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shipped to said plant from various points in the State of Washington and adjacent states, live cattle, hogs, sheep, and lambs, and after slaughtering same, sold and shipped the meat and meat products resulting therefrom to various purchasers throughout the states of Washington, Idaho, Montana and Oregon, and elsewhere, and still continues so to do, and as a part of its said business, respondent serves substantially all the trade that was served by said Stanton Co. while in business in competition with respondent, as hereinbefore set out.

PAR. 10. That on or about October 27, 1917, J. M. Van Kleeck, who was the general manager for respondent of the Stanton plant, acting as vice president of the E. H. Stanton Co., and Don Keizer, acting as secretary of the E. H. Stanton Co., both employees of respondent, in order to further carry out the intention and purpose of the respondent, executed a deed from E. H. Stanton Co. corporation, to respondent Armour & Co., conveying the nominal title to real estate which included the Stanton packing plant to respondent, for no other consideration than the nominal consideration of \$1.00; and that said deed was filed for record in the office of the Auditor of Spokane County, Washington, on November 7, 1917, and recorded in volume 354, Record of Deeds of said county, on page 538, as number 516,128; that a beneficial interest in, and the ownership of, the plant and property described in said deed still remain and are in E. H. Stanton Packing Co., which was and still is at the close of the taking of testimony in this case, May, 1920, in existence as a corporate entity, capable of holding and owning such property and the title thereto.

PAR. 11. That the effect of the acquisition by respondent of such capital stock of the E. H. Stanton Co., and the control and operation of the Stanton Packing Plant and business by respondent which followed the acquisition and still exists, was the entire elimination and suppression of the competition which had theretofore existed between respondent, Armour & Company and the said E. H. Stanton Company in the sale of meats and meat products, including fresh beef, pork, mutton, lamb and other meat products, throughout the said territory, including particularly the portions of the States of Washington, Montana and Idaho adjacent to the city of Spokane, Washington, known as the "Inland Empire," and also the entire suppression of the prospective competition between respondent and said E. H. Stanton Company, in the purchase and slaughtering of live stock.

CONCLUSIONS.

The effect of the acquisition, from May to September, 1917, by respondent Armour & Company, a corporation, of the entire capital stock of the E. H. Stanton Company, a corporation, under the con-

ditions and circumstances in these findings set out (1) was and is to totally suppress and destroy the existing and prospective competition in the meat-packing industry and trade between the E. H. Stanton Company, the corporation whose stock was acquired, and respondent, Armour & Company, the corporation making said acquisition, and (2) was and is to restrain commerce in that section of the United States known as the Pacific Northwest, including the States of Washington, Oregon, Idaho and Montana, in the purchase and sale of meat and meat products, commonly known as the meat-packing industry and trade, and (3) was and is to tend to create a monopoly in respondent, Armour & Company, in the meat-packing industry and trade in that section of the United States commonly known as the Pacific Northwest, including the States of Washington, Oregon, Idaho and Montana, and such acquisition, with each of said effects, constituted and is a violation of the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

The following provision of a certain contract made and entered into May 21, 1917, by and between respondent and E. H. Stanton—

"In consideration of the purchase price paid him by second party, first party agrees that for a period of ten years from date hereof, said first party will not engage, in Montana, Oregon, Idaho or Washington, either as owner, manager, employee or stockholder, in a like or similar business to that now carried on by the E. H. Stanton Company, a corporation"—

is unlawful, and in connection with the aforesaid acquisition of the capital stock of E. H. Stanton Co. by respondent, the effect thereof (1) was and is, totally to destroy the prior and prospective competition between the E. H. Stanton Co. and respondent, Armour & Company, and (2) was and is to restrain commerce in the purchase of live stock and in the sale of meat and meat products in that section of the United States known as the Pacific Northwest, including the States of Washington, Oregon, Idaho and Montana; and (3) was and is to tend to create a monopoly in said line of commerce in said section of the United States, and constitutes and is a violation of the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

The certain deed, dated October 27, 1917, from E. H. Stanton Company to Armour & Company, respondent herein, which was filed

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for record in the office of the Auditor of Spokane County, Washington, on November 7, 1917, and recorded in volume 354, Record of Deeds, on page 538, and purporting to convey certain real estate, which included the Stanton packing plant, was made and executed by representatives of respondent, acting at the same time as the officers of the said E. H. Stanton Company, corporation, was without consideration (other than nominal), was made subsequently to and as a result of the illegal acquisition of the capital stock of E. H. Stanton Company by respondent, and was a mere paper transfer of the property covered, done in furtherance of the unlawful purposes, for which respondent acquired the said capital stock, and in connection with the acquisition of said capital stock, the effect thereof (1) was and is totally to suppress the prior and prospective competition between E. H. Stanton Company and respondent, and (2) was and is to tend to create a monopoly therein, in that section of the United States known as the Pacific Northwest including the States of Washington, Oregon, Idaho and Montana, and as a result flowing from the acquisition by the respondent of the capital stock of the E. H. Stanton Company, the said transfer constitutes, and is, a violation of the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission on 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 conclusion that the respondent has violated Section 7 of the provisions of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes";

It is now ordered, That the respondent, Armour & Company, shall forthwith cease and desist from violating the provisions of Section 7 of said Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and particularly to so divest itself absolutely of all capital stock of the E. H. Stanton Company as to include in such divestment the Stanton packing plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization, and so as to either directly or indirectly retain none of the fruits of the acquisition of

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any of the capital stock of said E. H. Stanton Co., corporation, and to this end respondent shall first restore to the E. H. Stanton Co. by proper conveyance, all the property which was transferred to the respondent by the deed of October 27, 1917, filed for record in the office of the Auditor of Spokane County, Washington, on November 7, 1917, and recorded in volume 354 Record of Deeds of said County, on page 538, as number 516,128, or has otherwise been transferred from E. H. Stanton Company to respondent since respondent's acquisition of any of the capital stock of said E. H. Stanton Company.

It is further ordered, That in such divestment, no stock or property above mentioned to be divested shall be sold to any stockholder, officer, director, employee or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of, respondent or any of its subsidiaries; *provided*, that nothing herein contained shall prohibit respondent from selling said stock and property, or any part thereof, to E. H. Stanton, J. E. Hample, J. L. Hamilton, or anyone who was a stockholder of said E. H. Stanton Company prior to the date of acquisition of the capital stock of said E. H. Stanton Company by Armour & Company.

It is further ordered, That respondent shall forthwith cease and desist from further enforcing the following provision of a certain contract between E. H. Stanton and respondent, dated May 21, 1917:

In consideration of the purchase price paid him by second party, first party agrees that for a period of ten years from date hereof, said first party will not engage, in Montana, Oregon, Idaho or Washington, either as owner, manager, employee or stockholder, in a like or similar business to that now carried on by the E. H. Stanton Company, a corporation.

It is further ordered, That the respondent, Armour & Company, shall, within six months from the service of this order, submit in writing its report showing how this order has been carried out, including the names of the purchasers of said capital stock and the amount of money received or to be received therefor.

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