

IN THE MATTER OF

LOUIS H. TABACH, TRADING AS LONGWEAR HOSIERY
COMPANY, CERTIFIED HOSIERY COMPANY, AND
CANARY HOSIERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3229. Complaint, Sept. 18, 1937—Decision, Jan. 12, 1938*

Where an individual engaged in sale of hosiery among the various States through house-to-house canvassers, in substantial competition with those engaged in manufacture, sale, and distribution, or in sale and distribution, of hosiery in commerce among the various States and in the District of Columbia, and including among his said competitors manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and do not use methods and practices as below described in connection with offer, sale and distribution thereof—

- (a) Falsely represented that he manufactured the hosiery sold and distributed by him, and that such hosiery corresponded as to grade, texture, color, and quality to samples displayed by his said agents and representatives for customers' selection, facts being he was not a hosiery manufacturer and hosiery shipped was of a quality or grade inferior to sample selected and to that represented by his said agents and representatives, and in many instances not of size and color selected by purchaser;
- (b) Represented that his stock in trade was turned over every ten days, and was always new and fresh, and that some of his said hosiery was made by a certain specified well-known manufacturer of ladies' hosiery, facts being none of the products sold by him was made by manufacturer referred to, nor was his stock in trade turned over as above represented;
- (c) Represented that his so-called "Longwear" hosiery was woven with special lockstitch which prevented it from snagging, running or developing holes, and that it was guaranteed as hole-proof and run-proof for a period of from three to six months, facts being said hosiery was not thus woven and would not, with normal wear, last for period of time specified, and he did not replace worn with new hosiery as promised;
- (d) Represented that purchasers ordering not fewer than six pairs of hosiery would be given, without further charge, extra pair, and misrepresented postage which customer would actually be called upon and required to pay when goods were shipped, facts being he failed and refused to include so-called "free" pair in such order when shipment was made, and thereafter to deliver such pair as promised, and postage charge required was greater than that represented at time of sale; and
- (e) Exacted additional payments of ten percent or more to cover postage and insurance fee on extra shipment in case of exchange of goods to correct mistakes in color or size, and unduly and unreasonably delayed correction of mistakes in filling orders; and
- (f) Failed and neglected, in a number of instances, to make adjustments as promised, refusing adjustments unless and until purchaser sent in original

receipt given by salesman, and thereby, in some instances, defeating customer's efforts to secure adjustment, and, in number of instances, keeping receipts sent in without making adjustments, and retaining hosiery sent in for exchange or adjustment of mistakes without refunding purchaser's money;

With effect of deceiving and misleading purchasers and prospective purchasers into buying his said hosiery in the false and erroneous belief that he was a manufacturer and that hosiery sold and distributed would correspond in grade, etc., to salesman's samples, and that goods might be exchanged to correct mistakes without additional payment, and that such corrections would not be unreasonably and unduly delayed, deposits would be refunded in the absence of exchange or other satisfactory adjustment, and that hosiery in question was specially woven and guaranteed as above set forth, or was made by, as case might be, well-known manufacturer, and that his stock in trade was turned over, etc., as above represented, and that other undertakings and representations above set forth were true, and of misleading purchasers and prospective purchasers in the aforesaid respects and into purchase of his said hosiery by reason of such beliefs, in preference to that of competitors who do not resort to similar acts, practices, and misrepresentations in connection with the sale and distribution of their respective products, and with result thereby of unfairly diverting trade to him from such competitors; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Joseph C. Fehr for the Commission.

COMPLAINT

Pursuant to the provisions 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," the Federal Trade Commission, having reason to believe that Louis H. Tabach, an individual doing business under the trade names Longwear Hosiery Company, Certified Hosiery Company and Canary Hosiery Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Louis H. Tabach, is an individual, trading as Longwear Hosiery Company, Certified Hosiery Company and as Canary Hosiery Company, having his principal office and place of business located at 1060 Broad Street, in the city of Newark, in

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the State of New Jersey. Respondent is now, and for more than five years last past has been, engaged in the business of selling ladies' hosiery in commerce between the State of New Jersey and the several States of the United States, and in the District of Columbia. When said hosiery is sold, respondent causes the same to be transported from his place of business in the State of New Jersey to purchasers thereof located in States of the United States other than the State of New Jersey and in the District of Columbia. There has been for more than five years last past, and still is, a constant current of trade and commerce in said ladies' hosiery thus sold and distributed by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than five years last past has been, in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the manufacture of hosiery and in the sale and distribution thereof in commerce between the States of the United States and in the District of Columbia and with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of hosiery in said commerce.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, by and through his sales agents and representatives, sells and has sold ladies' hosiery directly to the persons by whom such hosiery is to be worn. Respondent sells said ladies' hosiery on orders taken by said sales agents and representatives through house-to-house canvass. Orders so solicited and received are forwarded to the respondent at his principal place of business in the city of Newark, in the State of New Jersey. Said sales agents and representatives of respondent represent that said orders, when received by respondent, are filled according to the statements and representations made by them, and with hosiery of a grade, quality, and texture as shown by samples displayed by said sales agents and representatives, and of a color and size selected by the customer.

PAR. 3. Respondent, in the course and conduct of his business, in said commerce, as aforesaid, represents by and through his sales agents and representatives

(a) That he is a manufacturer;

(b) That the "Longwear" hosiery sold by him is woven with a special lockstitch which prevents them from snagging, running, or developing holes; that such hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(c) That each pair of hosiery developing runs or holes within the period guaranteed will be replaced with a new pair without charge;

(d) That purchasers ordering not fewer than six pairs of hosiery will be given without further charge an extra pair;

(e) That the postage charge will be less than the customer is actually called upon and required to pay when goods are shipped C. O. D.;

(f) That some of the hosiery sold by respondent is manufactured by "Vanity Fair", a well-known manufacturer of ladies' hosiery; and

(g) That respondent's stock in trade is turned over every ten days and that said stock is always new and fresh.

PAR. 4. Respondent, in the course and conduct of his business in said commerce, as aforesaid, through his sales agents and representatives makes use and has made use of the following methods and practices:

(a) Exacting an additional payment of ten per cent (10%) or more to cover postage and insurance fee on the extra shipment in case of exchange of goods for the purpose of correcting mistakes in color and/or size;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, and in a number of instances failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failing and neglecting to refund the money paid by the purchaser;

(d) By refusing to make adjustments unless and until the purchaser sends in the original receipt given by the salesman, thereby, in some instances, defeating the efforts of the customer to secure an adjustment; and

(e) In a number of instances, keeping the receipts sent in and failing and neglecting to make any adjustment.

PAR. 5. The representations of respondent set forth in paragraphs 2 and 3 hereof, and others similar thereto, have the capacity and tendency to deceive and mislead and do deceive and mislead, purchasers and prospective purchasers of respondent's said hosiery into the false and erroneous beliefs:

(a) That respondent is a manufacturer;

(b) That the ladies' hosiery sold and distributed by respondent is made of a fabric whose grade, texture, color and quality correspond to the samples displayed by respondent's sales agents and representatives, and as selected by said customers;

(c) That goods purchased from respondent may be exchanged for the purpose of correcting mistakes in color and/or size, without an additional payment of ten per cent or more to cover postage and insurance fee on the extra shipment;

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(d) That correction of mistakes in filling orders will not be unduly and unreasonably delayed;

(e) That deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made;

(f) That respondent's hosiery is woven with a special lockstitch preventing it from snagging, running, or developing holes;

(g) That respondent's hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(h) That a purchaser of respondent's hosiery will get a new pair in exchange, without additional charge, if and when it develops runs or holes within the period guaranteed;

(i) That purchasers ordering not fewer than six pairs of hosiery will be given an extra pair without further charge;

(j) That the cost of C. O. D. shipments of goods is as represented by respondent and his sales agents and representatives;

(k) That certain hosiery sold and distributed by respondent is manufactured by "Vanity Fair," a well-known manufacturer of ladies' hosiery; and

(l) That respondent's stock in trade is turned over every ten days and that the same is always new and fresh.

PAR. 6. In truth and in fact, respondent, trading under the various trade names hereinbefore set forth, is not now and has never been a manufacturer of ladies' hosiery. Respondent ships hosiery of a quality or grade inferior to the sample selected and of a quality and grade inferior to that represented by his sales agents and representatives and, in many instances not of the size and color selected by the purchaser. The hosiery sold by respondent is not woven with a special lockstitch which prevents said hosiery from snagging, running, or developing holes. Said hosiery will not and does not, under normal wear, last for the period of time specified and the respondent will not and does not replace worn hosiery with new hosiery at the expiration of such period of time, as promised. Respondent fails and refuses to include the so-called free pair in the order when shipment is made, and he thereafter fails and refuses to deliver said free pair, as promised. The postage charge the customer is actually called upon and required to pay when the goods are delivered C. O. D. is greater than represented at the time of the sale. None of the hosiery sold by respondent is made by "Vanity Fair," nor is respondent's stock in trade turned over every ten days.

PAR. 7. There are among the competitors of the respondent in said commerce, manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and who do not use the methods and practices used by the respondent as hereinbefore

alleged in connection with the offering for sale, sale and distribution of their products.

PAR. 8. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 5 hereof, and into the purchase of respondent's said hosiery in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from his competitors and as a consequence thereof, substantial injury is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. Said acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions 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," the Federal Trade Commission, on September 18, 1937, issued, and later served its complaint in this proceeding upon the respondent, Louis H. Tabach, trading as Longwear Hosiery Company, Certified Hosiery Company, and Canary Hosiery Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived (oral argument not being requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Louis H. Tabach, is an individual trading as Longwear Hosiery Company. From time to time he has also done business as Certified Hosiery Company, and as Canary Hosiery Company. His principal office and place of business is located at 1060 Broad Street, Newark, N. J.

For more than five years respondent has been, and is now, engaged in the business of selling hosiery in commerce between the State of New Jersey and the various other States of the United States, and in the District of Columbia. When he sells his hosiery, he causes it to be transported from his place of business in Newark, N. J., to purchasers located in various other States of the United States and in the District of Columbia.

There has been, and still is, a course of trade and commerce in said hosiery by respondent between and among the various States of the United States and in the District of Columbia. Respondent has been for more than five years and is now in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the manufacture, sale and distribution, or in the sale and distribution of hosiery, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent employs sales agents and representatives who sell, and have sold, respondent's hosiery directly to the persons by whom such hosiery is to be worn. By and through these said sales agents and representatives, respondent sells hosiery on orders taken through house-to-house canvass. Orders so solicited and received are forwarded to the respondent at his principal place of business in Newark, N. J. By and through his said sales agents, respondent represents to purchasers and prospective purchasers that he is selling, and will ship and deliver to them, hosiery of the specified grade, quality, and texture by them ordered from samples displayed by his agents.

PAR. 3. In soliciting the sale of and selling his hosiery, respondent, by and through his sales agents and representatives, makes, among others, the following representations:

(a) That he is a manufacturer;

(b) That the "Longwear" hosiery sold by him is woven with a special lockstitch which prevents it from snagging, running, or developing holes; that such hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(c) That each pair of hosiery developing runs or holes within the period guaranteed will be replaced with a new pair without charge;

(d) That purchasers ordering not fewer than six pairs of hosiery will be given without further charge an extra pair;

(e) That the postage charge will be less than the customer is actually called upon and required to pay when goods are shipped C. O. D.;

(f) That some of the hosiery sold by respondent is manufactured by "Vanity Fair," a well-known manufacturer of ladies' hosiery; and

(g) That respondent's stock in trade is turned over every ten days, and that said stock is always new and fresh.

PAR. 4. As a matter of fact, respondent is not now, and has never been, a manufacturer of hosiery. In the usual course of his business aforesaid, he ships hosiery of a quality or grade inferior to the sample selected, and of a quality and grade inferior to that represented by his sales agents and representatives, and, in many instances, not of the size and color selected by the purchaser. This hosiery is not woven with a special lockstitch which prevents said hosiery from snagging, running, or developing holes, and will not, with normal wear, last for the period of time specified. Respondent does not replace worn hosiery with new hosiery, as promised. Respondent fails and refuses to include the so-called free pair in the order when shipment is made, and thereafter fails and refuses to deliver said free pair, as promised. The postage charge the customer is actually called upon and required to pay when the goods are delivered C. O. D. is greater than represented at the time of the sale. None of the hosiery sold by respondent is made by "Vanity Fair," nor is respondent's stock in trade turned over every ten days.

Further, this respondent makes a practice of—

(a) Exacting an additional payment of ten per cent (10%) or more to cover postage and insurance fee on the extra shipment in case of exchange of goods for the purpose of correcting mistakes in color and/or size;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, and, in a number of instances, failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failing and neglecting to refund the money paid by the purchaser;

(d) Refusing to make adjustments unless and until the purchaser sends in the original receipt given by the salesman, and, thereby, in some instances, defeating the efforts of the customer to secure an adjustment; and

(e) In a number of instances, keeping the receipts sent in and failing and neglecting to make any adjustment.

PAR. 5. The representations of respondent set forth in paragraphs 2 and 3 hereof, and his methods and practices as set out in paragraph 4 hereof, and other representations and methods and practices similar thereto, have the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers into purchasing respondent's said hosiery under the following false and erroneous beliefs:

(a) That respondent is a manufacturer;

(b) That the hosiery sold and distributed by respondent is made of a fabric whose grade, texture, color, and quality correspond to the samples displayed by respondent's sales agents and representatives, and as selected by said customers;

(c) That goods purchased from respondent may be exchanged for the purpose of correcting mistakes in color and/or size, without an additional payment of ten per cent or more to cover postage and insurance fee on the extra shipment;

(d) That correction of mistakes in filling orders will not be unduly and unreasonably delayed;

(e) That deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made;

(f) That respondent's hosiery is woven with a special lockstitch preventing it from snagging, running, or developing holes.

(g) That respondent's hosiery is guaranteed to be hole-proof and run-proof for a period of from three to six months;

(h) That a purchaser of respondent's hosiery will get a new pair in exchange, without additional charge, if and when it develops runs or holes within the period guaranteed;

(i) That purchasers ordering not fewer than six pairs of hosiery will be given an extra pair without further charge;

(j) That the cost of C. O. D. shipments of goods is as represented by respondent and his sales agents and representatives;

(k) That certain hosiery sold and distributed by respondent is manufactured by "Vanity Fair," a well-known manufacturer of ladies' hosiery; and

(l) That respondent's stock in trade is turned over every ten days, and that the same is always new and fresh.

PAR. 6. There are among the competitors of the respondent in interstate commerce, manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products, and who do not use the methods and practices used by the respondent, as

hereinbefore described, in connection with the offering for sale, sale, and distribution of their products.

PAR. 7. The aforesaid acts and practices of the respondent have a tendency and capacity to, and do, mislead purchasers and prospective purchasers into the erroneous beliefs that the various representations described in paragraphs 3 and 4 hereof are true, and into the purchase of respondent's said hosiery in and on account of such beliefs in preference to purchasing hosiery from respondent's competitors who do not resort to similar acts, practices and misrepresentations in connection with the sale and distribution of their respective products. As a result thereof, trade is unfairly diverted to the respondent from such competitors and substantial injury is done to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Louis H. Tabach, trading as Longwear Hosiery Company, Certified Hosiery Company, and Canary Hosiery Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 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 and the answer filed herein on the 7th day of January 1938, by respondent, admitting all the material allegations of the complaint to be true, waiving hearing on the charges set forth in the said complaint, and stating that without further evidence or other intervening procedure the Commission might issue and serve upon him findings as to the facts and conclusion drawn therefrom and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions 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."

It is hereby ordered, That the respondent, Louis H. Tabach, an individual, doing business as Longwear Hosiery Company, Certified Hosiery Company, and Canary Hosiery Company, or under any

other name, his agents, representatives, and employees in connection with the sale, or offering for sale of hosiery in interstate commerce and in the District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing that respondent manufactures the hosiery distributed and sold by him until he actually owns and operates, or directly and absolutely controls, the factory or plant wherein such hosiery is made.

2. Representing that the hosiery sold and distributed by respondent corresponds as to grade, texture, color, and quality, to the samples displayed by respondent's sales agents and representatives for selection by customers, unless and until such customers actually receive hosiery of the grade, texture, color, and quality, selected by them from the samples displayed by respondent's sales agents and representatives.

3. Representing that hosiery purchased from the respondent may be exchanged without an additional payment to cover postage and insurance fee on the extra shipment when such exchanges are not made without such additional payments.

4. Representing that correction of mistakes in filling orders will not be unduly and unreasonably delayed, unless and until orders are filled without undue and unreasonable delay.

5. Representing that deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made, unless and until deposits are in fact refunded or exchange or other satisfactory adjustment is made.

6. Representing that respondent's hosiery will not snag, run or develop holes by reason of a special lockstitch in weaving said hosiery or for any other reason.

7. Representing that said hosiery is guaranteed or that a purchaser of respondent's hosiery will get a new pair in exchange, without additional charge, if and when it develops runs or holes within the period guaranteed, unless and until purchasers whose hosiery develops runs or holes within the period guaranteed will in fact receive a new pair of hose in exchange without additional charge.

8. Representing that purchasers ordering not fewer than six pairs of hosiery will be given an extra pair without further charge, unless and until purchasers ordering six or more pairs of hosiery are in fact given an extra pair without additional charge.

9. Misrepresenting the cost of C. O. D. shipments of goods by informing prospective purchasers that such cost is less than it actually is.

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10. Representing that certain hosiery sold and distributed by respondent is manufactured by "Vanity Fair," well-known manufacturer of ladies' hosiery.

11. Representing that respondent's stock in trade is turned over every ten days, and that the same is always new and fresh, when that is untrue.

And it is hereby further ordered, That the said respondent shall, within 60 days from the date of the service upon him of this order, file with this Commission a report in writing setting forth the manner and form in which he shall have complied with this order.

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IN THE MATTER OF
AGRICULTURAL LABORATORIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3263. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a corporation engaged in the development of nitrogen fixing bacteria, costs of growing, selling and delivering which are generally not substantially affected by quantity purchases, and in the sale and distribution thereof, in competition with others engaged as members of the commercial legume inoculant industry, to customers, of whom some were competitively engaged in commerce in resale and distribution of its said product with other customers, and who included (1) wholesale distributors engaged in sale to retailers and directly to farmers, and selected or attempted to be selected by it on a basis of one for each trade area in which it sold, (2) the two largest mail order houses, and (3) some farm bureaus which were in competition with retailers in sale to farmers—

Discriminated in price, through granting to some customers competitively engaged with other customers in the resale of its inoculant, price differentials which did not make only due allowance for differences in cost of manufacture, sale or delivery resulting from differing methods or quantities in which commodity in question was to such purchasers sold or delivered, and were not in response to changing conditions affecting the market for, or the marketability of, the goods concerned, and through sales practice involving delivered price basis to some, and f. o. b. price to others, and return privileges to some, denied to others;

With result that the effect of said discriminations in price might be substantially to lessen competition and tend to create a monopoly in the line of commerce in which it was engaged, and that in which its distributors were engaged, and might be to injure, destroy, or prevent competition with it and with certain favored distributors and customers thereof:

Held, That such acts and practices constituted a violation of the provisions of Subsec. (a) of Sec. 2 of an act of congress approved Oct. 15, 1914, as amended.

Mr. A. W. DeBirny for the Commission.

Mr. Preston B. Kavanagh, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Agricultural Laboratories, Inc., hereinafter called respondent, since June 19, 1936, has been and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (Public No. 212, the Clayton Act),