

Complaint

26 F. T. C.

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),

as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936, (Public No. 692, the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Ohio and has its principal office and place of business at 3415 Milton Avenue in the city of Columbus, Ohio.

PAR. 2. For many years prior hereto and since June 19, 1936, respondent has been and is now engaged in the business of developing, manufacturing, selling, and distributing certain nitrogen-fixing bacteria, which is a commodity commonly known as a commercial inoculant and is useful in promoting the growth of leguminous plants and crops. In the course and conduct of its said business the respondent has been and is now developing and manufacturing said bacteria at its place of business in the State of Ohio and has been and is now, in direct active competition with other persons, partnerships, and corporations similarly engaged, selling, shipping, and distributing said bacteria in commerce from its said place of business in the State of Ohio to various purchasers of said bacteria located in the State of Ohio and the several other States of the United States and in the District of Columbia. For many years prior hereto and since June 19, 1936, there has been and is now between respondent and purchasers of said bacteria a course of trade and commerce in said bacteria in and between the State of Ohio and the several other States of the United States and the District of Columbia.

PAR. 3. Since June 19, 1936, in the course and conduct of its business described in paragraph 2 hereof and while engaged in trade and commerce between the State of Ohio and the other States of the United States and the District of Columbia as therein described, the respondent has been and is now, in the course of such commerce, discriminating in price between different purchasers of bacteria of like grade and quality sold and shipped in commerce, as aforesaid, by respondent to said purchasers and by them purchased from respondent in commerce for use, consumption, or resale within the State of Ohio and the several other States of the United States and the District of Columbia, in that the respondent has been and is now selling bacteria to some of said purchasers at prices lower than the prices at which respondent has been and is now selling bacteria of like grade

and quality to other of said purchasers, and the respondent has been and is now allowing to some of said purchasers a larger discount from the prices at which bacteria was and is sold to them by respondent than the discount, if any, which respondent has been and is now allowing to other purchasers of bacteria of like grade and quality purchased from respondent at the same prices.

PAR. 4. Since June 19, 1936, many purchasers of bacteria and customers of respondent receiving the benefit of the aforesaid discriminations in price, hereinafter referred to as favored customers, have been and are now in substantial competition in the use, consumption, sale, resale, and distribution of said bacteria with many other purchasers of bacteria and customers of respondent not receiving the benefit of said discriminations in price, hereinafter referred to as disfavored customers, and many customers of said favored customers have been and are now in like competition with many customers of said disfavored customers, and the effect of the aforesaid discriminations in price may be substantially to lessen competition in the sale or distribution of said bacteria or to injure, destroy, or prevent competition in the use, consumption, sale, resale, or distribution of said bacteria between and among said favored customers and said disfavored customers and between and among the customers of said favored customers and the customers of said disfavored customers and between and among the respondent and other persons, partnerships, and corporations similarly engaged in the sale and distribution of commercial inoculants.

PAR. 5. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (a) of the above-mentioned 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), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (Public No. 692, the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), the Federal Trade Commission on Novem-

ber 10, 1937, issued and served its complaint in this proceeding upon the respondent, Agricultural Laboratories, Inc., a corporation, charging it with discriminating in price between different purchasers of inoculants in violation of subsection (a) of section 2 of the afore-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 and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, Agricultural Laboratories, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of Ohio, with its principal office and plant located at 3415 Milton Avenue, Columbus, Ohio. At all times herein mentioned said respondent has been engaged in the business of developing, selling and distributing certain nitrogen fixing bacteria, useful for inoculating the seeds of leguminous plants, from its said place of business in the State of Ohio to various purchasers of said bacteria located in the State of Ohio and the several States of the United States and there has been and is now between respondent and purchasers of said bacteria a course of trade and commerce in said bacteria in and between the State of Ohio and the several States of the United States.

PAR. 2. The respondent is a member of the commercial legume inoculant industry of the United States which industry grows, sells and distributes commercial inoculants to the value of approximately \$1,000,000 in gross annual sales. There are approximately fourteen members of this industry, all competitively engaged one with the other in the sale and distribution in commerce of commercial inoculants. The bacteria are grown for the inoculation of seeds of leguminous plants. The bacteria are encouraged to multiply from various strains and are then placed in a carrier, which is either a

jelly or a humus medium such as peat or charcoal, for commercial distribution. Seeds of leguminous plants are saturated with the bacteria before planting. These bacteria have the function of associating with legume plants, with the result that an adequate number of bacterial nodules are formed on the roots of the plants to extract nitrogen from the air for the purpose of aiding luxuriant growth of the plant. Principally these inoculants are placed upon alfalfa and sweet clover seeds, soy beans, peas and other legumes.

PAR. 3. Said respondent confines its sales generally to wholesale distributors and attempts to select one for each trade area in which it sells. Such wholesalers sell to retail dealers as well as directly to farmers. Additionally respondent sells its product to the two largest mail order houses who sell to consumers throughout the United States. The respondent also sells to some farm bureaus which, however, generally do not compete with respondent's wholesale distributors. Respondent sells to a few retailers. Some of respondent's customers are competitively engaged in commerce in the resale and distribution of the inoculant product with other of respondent's customers. The farm bureaus compete with retail dealers in selling to the farmers.

PAR. 4. Respondent sells its product to its wholesalers at various prices of from 14¢ to 16¢ for the one bushel size. Retail distributors pay 30¢ for the one bushel size. Some of the product is sold on a delivered basis and some customers, paying the highest price are sold F. O. B. Columbus, Ohio. The farm bureaus all purchase at a price of 14¢ delivered. The mail order houses purchase at 20¢ delivered for the one bushel size with the privilege of returning unsold goods. The farm bureaus are not allowed to return unsold goods but may return empty cans and obtain a credit of 2¢ a can. Wholesalers may return not to exceed 10% of their annual purchases. The respondent sells to a farm bureau at 14¢ and also sells at 14¢ to a competing wholesaler. Respondent departs from its regular policy with this wholesaler and does not allow the return of goods but only the 2¢ credit for each empty can returned. However, the farm bureau purchases on a 14¢ delivered price basis whereas the competing wholesaler purchases on a 14¢ non-delivered price basis, that is in the latter instance F. O. B. Columbus, Ohio.

PAR. 5. The granting of a lower price to some customers competitively engaged with other customers in the resale of the inoculant is under the circumstances set forth above a discrimination in price in commerce between purchasers of respondent's product, which pur-

chases are for use, consumption or resale within the United States.

PAR. 6. The effect of said discriminations in price may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which the respondent is engaged and in the line of commerce in which its distributors are engaged; and the effect of said discrimination may be to injure, destroy or prevent competition with the respondent and with certain favored distributors and with customers of such favored distributors.

PAR. 7. The costs of growing, selling and delivery are generally not substantially affected by quantity purchases, largely due to the practice of accepting the return of goods unsold, which returned goods are then practically valueless.

PAR. 8. The discriminations in price set forth above do not make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the differing methods or quantities in which such commodity is to such purchasers sold or delivered. That such price differentials were not in response to changing conditions affecting the market for or the marketability of the goods concerned.

CONCLUSION

The aforesaid acts and practices of respondent, as set out in paragraph 5 hereof, are in violation of Section 2 (a) of said Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C. title 15, section 13), 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 respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

It is ordered, That the respondent, Agricultural Laboratories, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of commercial inoculant

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in interstate commerce or in the District of Columbia do forthwith cease and desist from the unlawful discriminations in price found in paragraph 5 of the aforesaid findings as to the facts and conclusion.

It is further ordered, That the said respondent, Agricultural Laboratories, Inc., within 60 days from the date of the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

HANSEN INOCULATOR COMPANY, 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, 1938

Docket 3264. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a corporation engaged in sale and distribution of bacteria inoculation for leguminous plants, as member of the commercial legume inoculant industry, and, as such, in competition with others engaged in sale and distribution in commerce of commercial inoculants, costs of growing, selling, and delivering which are generally not substantially affected by quantity purchases, and in selling, as thus engaged, through salesmen, at varying price not related to savings in cost of production, sale, or delivery or to buyer resale functions, to customers whom it classified as consumers, retail dealers, and jobbers, but who included farm bureaus reselling large portion of its product to farmers and occasionally to local elevators and other dealers, and who, as "jobbers," generally sold both consumers and dealers, and of whom farm bureau competed with retailers in sale to farmers, and customer "jobbers" resold to consumers at lower price than customer "retailers,"—

- (a) Discriminated in price through sale to its said customers at prices based on, and varying in accordance with, aforesaid classifications, and involving price differentials which did not make only due allowance for differences in cost of manufacture, sale, or delivery resulting from different 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 marketability of, the goods concerned, and which constituted discrimination, respectively, as to customers competitively engaged in resale of inoculant of like grade and quality to consumers, and as to customers competitively engaged in resale of such products to dealers; and
- (b) Discriminated in price through sale to certain dealer "jobber" of one of its said products under private brand at fifteen cents, while requiring of other dealer customers, in competition with aforesaid dealer "jobber," twenty-four cents for same quantity of same product sold under similar labels, and thereby exacted price differential and discrimination which did not make only due allowance for differences in cost of manufacture, etc., as above set forth, and were not in response to changing conditions, etc., as hereinbefore described;

With result that 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.