

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, 1936

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.

Complaint

26 F. T. C.

Mr. A. W. DeBirny for the Commission.

Williamson & Winkelmann, of Urbana, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Hansen Inoculator Company, 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 Illinois and has its principal office and place of business at 808 North Lincoln Avenue in the city of Urbana, Ill.

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 Illinois 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 Illinois to various purchasers of said bacteria located in the State of Illinois 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 Illinois 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 Illinois 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 Illinois 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 November 10, 1937, issued and served its complaint in this proceeding upon the respondent, Hansen Inoculator Company, Inc., a corporation, charging it with discriminating in price between different purchasers of inoculants in violation of subsection (a) of section 2 of the aforesaid 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 the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, Hansen Inoculator Company, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of Illinois, with its principal office and plant located at 808 North Lincoln Avenue, Urbana, Ill. At all times herein mentioned, said respondent has been engaged in the business of selling and distributing bacteria inoculation for the seeds of leguminous plants to customers located in the several States of the United States, more particularly to customers in States between Maine and Minnesota on the North, and Mississippi and Florida on the South, and including these named States, and there has been and is now a course in trade and commerce in said

bacteria in and between the State of Illinois 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 classifies its customers as consumers, retail dealers, and jobbers. One who sells to consumers is considered to be a retail dealer and one who sells to dealers a jobber. However, in this industry there are very few distributors who sell only as dealers or jobbers. Generally distributors called jobbers sell both to consumers and to dealers. Additionally a large portion of the respondent's product is sold through farm bureaus which, in turn, sell the inoculant to farmers and occasionally to local elevators and other dealers.

PAR. 4. Some of the 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. Customers classified by the respondent as jobbers usually purchase in commerce respondent's inoculant, which they re-sell to consumers at a lower price than do other of respondent's customers competing for the same consumer business but who are classified and sold at retailers' list.

PAR. 5. Said respondent, Hansen Inoculator Company, Inc., issued a 1937 Distributor Price List effective January 1, 1937. Respondent has been and now is generally selling his products to its customers at such list prices less 20% off such jobbers' and dealers' lists, said distributor price list being as follows:

Findings

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1937 DISTRIBUTOR PRICE LIST

Prices herein shown are effective Jan. 1, 1937 and are subject to change without notice

ALFALFA, SWEET CLOVER, CLOVERS

Groups 1 and 2

Size	Inoculates	Prepared in—	No. per case	Con- sumer price	Dealer price	Jobber price
¼ bu.....	30 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
1 bu.....	60 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
2½ bu.....	150 lbs. seed.....	Humus or jelly.....	12, 24, 36	1.00	.60	.40

SOY BEANS, COWPEAS, GARDEN PEAS and BEANS

Groups 3, 4, 5, and 6

1 bu.....	60 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
2 bu.....	120 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
5 bu.....	300 lbs. seed.....	Humus or jelly.....	12, 24, 36	1.00	.60	.40
10 bu.....	600 lbs. seed.....	Humus only.....	12	1.75	1.05	.70
25 bu.....	1500 lbs. seed.....	Humus only.....	6	3.00	1.80	1.20

LESPEDeza

Group 7

1 bu.....	30 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
2 bu.....	60 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
5 bu.....	150 lbs. seed.....	Humus or jelly.....	12, 24, 36	1.00	.60	.40

AUSTRIAN WINTER PEAS and VETCH

Group 4a

¼ bu.....	30 lbs. seed.....	Humus only.....	12, 24, 36	\$0.35	\$0.21	\$0.14
1 bu.....	60 lbs. seed.....	Humus or jelly.....	12, 24, 36	.50	.30	.20
1¾ bu.....	100 lbs. seed.....	Humus only.....	12, 24, 36	.60	.36	.24
5 bu.....	300 lbs. seed.....	Humus only.....	12	1.75	1.05	.70
Garden size.....	10 lbs. or less of seed.	Humus only.....	12	.20	.12	.08

Prices F. O. B. Urbana, Illinois. Terms: 2% 10 days, net 30 days. Left over cultures are returnable, prepaid, for credit or exchange. The consumer's price is placed on the labels of the products. In many instances the labels, whether they bear private brand names or the Hansen name, resemble each other having green borders and background of leguminous plants and similar language. The inoculant is the same regardless of the label on the container. Prices to county farm bureaus vary and are frequently as low as 14¢ for the one bushel size.

PAR. 6. County farm bureaus retail the one bushel size frequently for 30¢ having purchased the same at 14¢, or retail the 2½ bushel

size at 50¢ where they purchase at 28¢. Competing dealers pay 24¢ for the one bushel size and 48¢ for the 2½ bushel size. County farm bureaus sell to non-members also.

PAR. 7. Said respondent distributes its inoculant by means of traveling salesmen in the States of Iowa, Minnesota, Pennsylvania, and Ohio. Orders obtained by the salesmen are delivered by the respondent and collections are also made by the respondent. Such salesmen work on a commission basis. These salesmen sell at varying prices which are not related to savings in cost of production, sale, or delivery or functions performed by the buyer in the resale of the goods.

PAR. 8. The difference in prices, resulting from the said classifications as set forth in paragraphs 3 and 5, of inoculant of like grade and quality to customers competitively engaged in reselling the same to consumers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondent's inoculant.

PAR. 9. The difference in prices, resulting from the said classifications as set forth in paragraphs 3 and 5, of inoculant of like grade and quality to customers competitively engaged in reselling the same to dealers is, as to that portion of such inoculant under the circumstances hereinbefore set forth, a discrimination in price in commerce between purchasers of respondent's inoculant.

PAR. 10. Respondent sells to a certain dealer-jobber the one bushel size humus or jelly for 15¢ under a private brand. The dealer-jobber, in turn, resells and distributes the same in commerce to consumers located in adjoining states for 35¢. The said dealer referred to herein is in competition with other dealer customers of the respondent, who are required to pay 24¢ for the one bushel size of the same inoculant sold under respondent's name. The dealer referred to advertises in commerce that the inoculator "is made for us under our own label, by a reliable manufacturer at Urbana, Illinois" and, as stated in paragraph 5 hereof, the labels are similar regardless of whether they bear the Hansen or private brand name. The differential in price amounts to and is under the circumstances set forth above a discrimination in price in commerce between purchasers of respondent's product, which purchases are for use, consumption and resale within the United States.

PAR. 11. 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 discriminations may be to injure, destroy or prevent competition with the respondent and with certain favored distributors and with customers of such favored distributors.

PAR. 12. 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. 13. 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 paragraphs 8, 9, and 10 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, Hansen Inoculator Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of commercial inoculant in interstate commerce or in the District of Columbia, do forthwith cease and desist from the unlawful discriminations in price found in paragraphs 8, 9, and 10 of the aforesaid findings as to the facts and conclusion.

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Order

It is further ordered, That the said respondent, Hansen Inoculator Company, 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.

IN THE MATTER OF

ALBERT L. WHITING AND LUCILLE D. WHITING,
TRADING AS THE URBANA LABORATORIES

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 3265. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a firm engaged in sale and distribution of bacteria inoculation for leguminous plants, as members 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, its said products to customers, of whom some were competitively engaged in resale and distribution of its said products with other customers, and whom it classified as consumers, retailers, and jobbers, and who included farm bureaus as purchasers of large portion of its product for resale, in competition with retailers, to farmers, and, occasionally, to local elevators and other dealers, and of whom its distributor "jobbers" generally sold both to consumers and to dealers—

- (a) Discriminated in price, through sale to customers at prices based on, and varying in accordance with, aforesaid classification, 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 county farm bureaus at price basis under which they frequently retailed at lower price than that of small independent merchant, and through practice under which postage, absorbed in case of some customers, was required to be paid in case of others, and through concession to meet, as asserted, competition of farm bureau, extended to one, but not another, and thereby imposed 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 the effect of said discrimination 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;