

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;

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.

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

COMPLAINT

The Federal Trade Commission, having reason to believe that Albert L. Whiting and Lucille W. Whiting, individuals trading under the firm name and style of "The Urbana Laboratories," hereinafter called respondents, since June 19, 1936, have been and are 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 respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership, have their principal office and place of business at 406 North Lincoln Avenue, Urbana, Ill.

PAR. 2. For many years prior hereto and since June 19, 1936, respondents have been and are 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 their said business the respondents have been and are now developing and manufacturing said bacteria at their place of business in the State of Illinois and have been and are now, in direct active competition with other persons, partnerships and corporations similarly engaged, selling, shipping, and distributing said bacteria in commerce from their 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 respondents 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 their 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 respondents have been and are 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 respondents to said purchasers and by them purchased from respondents 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 respondents have been and are now selling bacteria to some of said purchasers at prices lower than the prices at which respondents have been and are now selling bacteria of like grade and quality to other of said purchasers, and the respondents have been and are now allowing to some of said purchasers a larger discount from the prices at which bacteria was and is sold to them by respondents than the discount, if any, which respondents have been and are now allowing to other purchasers of bacteria of like grade and quality purchased from respondents at the same prices.

PAR. 4. Since June 19, 1936, many purchasers of bacteria and customers of respondents 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 respondents 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 respondents and other persons, partnerships and corporations similarly engaged in the sale and distribution of commercial inoculants.

PAR. 5. The aforesaid acts of respondents 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 respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership charging them 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 respondents' answer, the Commission, by order entered herein, granted respondents' 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 respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership and maintaining their principal office and plant at 406 North Lincoln Avenue, Urbana, Ill. At all times herein mentioned, said respondents have 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 the States located between Ohio, on the East, and Kansas, on the West, and North and South the width of the country, and there has been and is now a course of trade and commerce in said bacteria in and between the State of Illinois and the several States of the United States.

PAR. 2. Said respondents are members of the commercial legume inoculant industry of the United States which 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 respondents classify their 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 respondents' 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 respondents' customers are competitively engaged in commerce in the resale and distribution of the inoculant product with certain other of respondents' customers. The farm bureaus compete with retail dealers in selling to the farmers.

PAR. 5. Said respondents issued a 1937 dealer price list, effective January 1, 1937. Respondents have and are generally selling their products to their customers at such list prices, said price list being as follows:

Findings

Alfalfa, Sweet Clovers (Group 2)

Red, Alsike, White, Crimson, Mammoth Clovers (Group 1)

Quantity	1 bu. size	2½ bu. size
Each.....	\$0.38	\$0.75
1 dozen.....	.32	.65
3 dozen.....	.30	.62
Retail Price.....	.50	1.00

Soy Beans (Group 5)

Cowpeas, Lima Beans, Velvet Beans (Group 3)

Peas, Vetches, Austrian Peas (Group 4)

Beans (Group 6)

Quantity	2 bu. size	5 bu. size
Each.....	\$0.38	\$0.75
1 dozen.....	.32	.65
3 dozen.....	.30	.62
Retail Price.....	.50	1.00

Smaller Sizes—Alfalfa, Sweet Clovers, Clovers, Soy Beans, Cowpeas, Peas, Vetches, Beans

Quantity	½ bu. size	1 bu. size
Each.....	\$0.28	\$0.28
1 dozen.....	.22	.22
3 dozen.....	.20	.20
Retail Price.....	.35	.35

Left over cultures are returnable, prepaid, for credit or exchange.

The consumer's price is placed on the labels of the products. Prices to certain county farm bureaus vary and are frequently as low as 17¢ for the one-bushel size which is sold to many dealers for 30¢ and to a number for 20¢. County farm bureaus retail the one-bushel size frequently at a lower price than small independent merchants, having purchased the one-bushel size at from 17¢ to 20¢ or the 2½-bushel size at from 34¢ to 40¢. A typical competitive situation disclosed one dealer selling at 50¢ and purchasing the one-bushel size at 30¢. A competing dealer likewise sold at 50¢ and likewise purchased at 30¢ but had the postage paid. Another dealer, competing with the first-named, sells at 40¢ but buys at 20¢ and states that his lower price is made to meet competition created by the county farm bureau. Many county farm bureaus sell to nonmembers also. These county farm bureaus are direct competitors of independent retail merchants buying at higher prices. Where, in fact, jobbing services are rendered by State or county farm bureaus, nothing herein contained shall preclude jobber prices on that portion which is jobbed.

Order

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PAR. 6. 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 respondents' inoculant.

PAR. 7. 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 respondents' inoculant.

PAR. 8. 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 respondents are engaged and in the line of commerce in which their distributors are engaged; and the effect of said discrimination may be to injure, destroy, or prevent competition with the respondents and with certain favored distributors and with customers of such favored distributors.

PAR. 9. 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. 10. 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 6 and 7 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 respondents 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 respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership, their 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 6 and 7 of the aforesaid findings as to the facts and conclusion.

It is further ordered, That the said respondents, Albert L. Whiting and Lucille D. Whiting, trading under the firm style and name "The Urbana Laboratories," a partnership, 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
THE NITRAGIN 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 3266. Complaint, Nov. 10, 1937—Decision, Jan. 12, 1938

Where a corporation engaged in the development of nitrogen fixing bacteria and in the sale and distribution of such inoculants, costs of growing, selling, and delivering which are generally not substantially affected by quantity purchases, in competition with others engaged as members of the commercial legume inoculant industry, to customers whom it classified as consumers, retailers, and jobbers, but who included, as purchasers of a large portion and of a considerable portion of its product, respectively, county farm bureaus reselling to farmers and occasionally to local elevators and other dealers, and mail order catalog houses reselling to consumers, and of whom farm bureaus competed with retailers in sale of its said product to farmers, jobbers resold to consumers at lower price than did other competitor-customers classified and sold to as retailers, and mail order houses competed with retailer-dealers in sale to farmers, and of which customers, specially favored county farm bureaus competed generally with both jobbers and retailers, and certain similarly favored jobbers were enabled to sell to such bureaus at jobbers' prices—

- (a) Discriminated in prices through sale to its said customers at prices based on, and varying in accordance with, aforesaid classifications, and through according some, but not all, mail order houses, ordinarily sold at jobbers' prices, twenty percent off list, and some, but not all, jobbers, similar concession, and through according jobber prices to retailers purchasing \$100 or more yearly; and
- (b) Discriminated in prices through according twenty percent off list, denied to certain competitor jobbers, to certain county farm bureaus purchasing at jobbers' prices and selling, in some instances, to jobbers, retailers, and consumers, and in competition generally with both aforesaid distributive classes, and through according aforesaid twenty percent concession from jobbers' price to favored jobber customers, thereby enabled to sell at jobber prices to county farm bureaus, and through granting of such prices to certain retailers above noted, an additional twenty percent concession from jobbers' list to some, but not all, mail order houses;

With result that effect of said discriminations in price and 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 such commodity was to such purchasers sold or delivered, and were not in response to changing conditions affecting market for, or marketability of, goods concerned, might be substantially to lessen competition and tend to create monopoly in line of commerce in which its distributors were engaged, and to injure, destroy, or prevent competition with it and with certain favored distributors and customers of such distributors;