

Syllabus

IN THE MATTER OF

AMERICAN FIELD SEED COMPANY, TRADING AS SUN-FIELD SEED SERVICE AND STANDARD SEED COMPANY, AND ERNEST E. ELDER AND J. F. SINN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2872. Complaint, July 7, 1936—Decision, July 29, 1938

Where a corporation and two individuals who controlled the same and managed its business activities, engaged in the sale and distribution of agricultural seed by mail order, and also under certain trade names, respectively, at wholesale to the dealer trade and to local retail merchants, and directly through agents equipped by it with samples, price lists, and trade literature—

- (a) Represented in its mail order catalogs that it was founded or established in 1915, and was "a well-established firm" which had been in the same location for 19 years," notwithstanding fact it did not come into being until organized under the laws of Illinois in 1922;
- (b) Represented in its said catalogs that all its seed was of high germination and high purity, and was so guaranteed, and that it purchased only good seed and that the same was recleaned and relatively free from weed seed, facts being that not all its seed was of high germination and high purity, and its said products did in fact contain considerable quantities of weed and noxious seeds, as well as other foreign matter;
- (c) Represented, as aforesaid, that all seed sold and offered by it was first cleaned by it with its own equipment, and that all its said seed was analyzed and tested by it in its own laboratory and by its own experts in charge thereof, facts being that it purchased quantities of seed already cleaned from companies engaged in business involved, did not itself reclean such seed before sale, and some of its said product purchased from other companies was sold to customers without being tested and analyzed, as above claimed;
- (d) Represented, as aforesaid, that they labeled and tagged shipments of seed in conformity to the laws of the State into which it was sold and shipped, facts being they admittedly made no effort to comply with such laws, and many of the shipments did not in fact so comply;
- (e) Represented, in soliciting orders from seed dealers and retail grain dealers, in connection with a certain variety of oats, that they were winter oats, and if planted in the late fall in State in question would grow through the winter, and flourish in temperatures as low as 11° below, and that yield thereof would be luxuriant and abundant, and that stock from which such oats were obtained was grown within 90 miles of Chicago, facts being that they were not winter oats, "winter killed" after temperatures as low as 2° below, produced no crop at all by reason of said fact, and fact that no oats will grow through winter in State in question, caused a considerable financial loss to customers involved, and said oats were not developed or grown near aforesaid city, but came from places in States far distant from Illinois;

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- (f) Set forth on tags and labels attached to bags and containers of their seed, in preparation thereof for shipment to purchasers, markings stating percentage of purity and germination thereof, and in catalogs advised customers that their seed was tested with painstaking accuracy by experts in their laboratory, and that each shipment was tagged and labeled and customers could rely upon representations appearing thereon, facts being that seed shipped by them was of low germinating power and was misbranded under laws of States into which shipped in that it failed to germinate within the recognized tolerances or allowances, and statements on the tags and labels thereof as to the purity content were false in that it was substantially lower than represented and not within such tolerances or allowances as above set forth:

With effect of misleading a substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and into purchasing, in such belief and induced thereby, a substantial volume of their seed, and of unfairly diverting thereby trade to them from competitors who truthfully represent the seed they offer and sell:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. George Foulkes for the Commission.

Townley, Campbell, Clark & Miller, of Chicago, Ill., for respondents.

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 American Field Seed Co., a corporation, also doing business under the firm name and style of Sun-Field Seed Service (unincorporated), and Standard Seed Co. (unincorporated), and Ernest E. Elder, as president of American Field Seed Co. and individually, and J. F. Sinn, as vice president and treasurer of American Field Seed Co. and individually, all hereinafter designated as respondents, are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by and in regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Field Seed Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business at 1929 West Forty-third Street, Chicago, Ill.

Sun-Field Seed Service and Standard Seed Co., both of 1929 West Forty-third Street, Chicago, Ill., are unincorporated trade names

used by the respondent, American Field Seed Company, for the purpose of transacting certain phases of its business.

Respondent Ernest E. Elder, also of 1929 West Forty-third Street, Chicago, Ill., is president of the respondent, American Field Seed Co., and respondent J. F. Sinn, also of 1929 West Forty-third Street, Chicago, Ill., is vice president, treasurer, and majority stockholder of the respondent, American Field Seed Co. They control, manage, and operate the business activities and transactions of said corporation and the business activities and transactions of the Sun-Field Seed Service and Standard Seed Co.

The relationship of the respondents Ernest E. Elder and J. F. Sinn to said respondent, American Field Seed Co., and its unincorporated subsidiaries, Sun-Field Seed Service and Standard Seed Co., is such that respondents Ernest E. Elder and J. F. Sinn are able to and do use said corporation, American Field Seed Co., and its unincorporated trade subsidiaries, Sun-Field Seed Service and Standard Seed Co., as instrumentalities to accomplish such things as respondents Ernest E. Elder and J. F. Sinn purpose and plan. The acts, practices, and transactions of said corporation and its unincorporated trade subsidiaries, the Sun-Field Seed Service and Standard Seed Co., are equally the acts, practices, and transactions of Ernest E. Elder and J. F. Sinn as individuals. The acts and practices of said individual respondents are to be deemed equally alleged herein as being the acts, practices, and transactions of said corporation, American Field Seed Co., and its unincorporated subsidiaries, Sun-Field Seed Service and Standard Seed Co., as hereinafter alleged and charged.

PAR. 2. Respondents have been and are engaged in the business of offering for sale and selling field seed in commerce between and among the various States of the United States and in the District of Columbia. They cause said seed to be transported, when sold, from their principal place of business in the State of Illinois into and across the various States of the United States and the District of Columbia to the several purchasers thereof, located at various places in States other than the State of Illinois or in the District of Columbia, and they have maintained a constant current of trade and commerce in said seed sold by them between and among the various States and in the District of Columbia.

Other persons, firms, associations, and corporations have been and are engaged in offering for sale, selling, and transporting in commerce between and among the various States of the United States, like and competitive seed used by farmers for planting and sowing for ultimate growth and development of farm crops therefrom, and

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respondents are engaged in substantial competition with such concerns in the sale and distribution of seed in commerce as herein set out.

PAR. 3. Respondents are dealers in farm or field seed and in the course and conduct of their business in commerce, as defined herein, sell their seed to farmers and planters largely through their "mail order" business, obtained by the wide distribution of seed catalogues and by advertising in newspapers, magazines and other publications having a large and extended circulation among farmers and planters. Respondents also sell their farm seed at retail through the medium of a large network of local representatives or salesmen, located in several States in which they operate, who contact farmers directly. Respondents also sell their products at wholesale to other dealers and to local retail merchants.

In said ways and by said means, respondents have made to the general public exaggerated, false, and misleading statements as to the duration of the corporate existence of American Field Seed Co. and its length of time in said business; as to the kind and quality of its seeds, their degree or percentage of germination to which susceptible, and their degree or percentage of purity; as to the degree or percentage of their freedom from noxious weeds, dirt, and foreign matter, and place or State of origin; as to their desirability for winter planting and cold-resisting qualities, and as to other matters, with the purpose, intent, and effect of misleading and deceiving the purchasing public with the result of promoting the sale in commerce of its seed. These representations, made as aforesaid, have created and do create a demand on the part of the purchasing public for respondents' seed in preference to the seed of their competitors. These advertisements or oral statements contain assertions or representations, among others, such as the following:

American Field Seed Company, Founded in 1915, Chicago, Illinois.

We are a well established firm and have been in business in the same location for over nineteen years.

Save on "Alsike" \$14.58—Thistle free.

Every pound is guaranteed to grow.

Nothing is left to chance. We have banished the days of guess-work in seeds. Even the best seed-men get fooled on quality. There is only one safe, sure way and that is a scientific analysis of every lot of seed—every one of our lots of seed are analyzed and tested.

We know it will grow and therefore we guarantee it to be good seed that will grow.

Every bag is tagged according to law. The tag tells the story.

It is always an economy to buy well cleaned seed. We buy good seed and then make them better and you will profit by using such seed.

Your order is absolutely safe.

You are dealing with farm-seed experts when you send your order to us and we take the very best possible care of your business.

You can absolutely depend on this seed. It is dependable, safe seed to sow. Quite free from noxious weeds.

All seeds tested and sold subject to state or government test.

Your special brand—combines low price and superior quality.

Every pound of seed is guaranteed satisfactory.

Every pound of this seed is new crop and home grown.

We can supply you with high purity and high germinating seeds.

The cleaning equipment with its modern devices enables us to make a finer quality than many can produce.

We handle our shipments in compliance with the stringent seed laws of Illinois.

The said respondents, in the course and conduct of their business in commerce, as aforesaid, also cause labels or tags to be affixed to the bags or other containers in which its farm seed is sold, purporting to set out the true contents of said bag or container, the true purity of the seed or seeds contained therein, the true amount of inert matter contained therein, the true percentage of weed seeds contained therein, if any, and the true degree of germination to which said seed is susceptible.

The said respondents, in the course and conduct of their business in commerce, as aforesaid, also advertised in the manner set out above, and represent orally, through the medium of their salesmen and representatives, that certain of their farm seeds are cold-resistant and as being highly adaptable for winter planting, which advertisements and statements contain representations such as:

You will find all of our seeds extra winter hardy.

We do not sell clover from western Oregon or other sections which produce seed lacking in winter hardiness.

PAR. 4. In truth and in fact, the respondent, American Field Seed Co., was not founded in 1915, and has not been in business for over 19 years, but is an Illinois corporation which was chartered July 11, 1922. Neither does every pound or all of respondents' seed germinate or grow, nor a reasonable percentage thereof; nor is nothing left to chance or guesswork in the preparation of respondents' field seed for marketing; nor do respondents prepare their seed for sale in a scientific manner; nor is every one of respondents' lots of seed thoroughly cleaned, analyzed, and tested; nor is every bag of respondents' seed tagged according to law or sold in compliance with law. Neither does the seed delivered by respondents correspond to the quality, purity, germination, or freedom from weeds, as set out on said tags; nor are respondents' seeds well cleaned, pure, and free from weeds, but they do, in truth and in fact, contain noxious weed seeds such as dodder, Russian thistle, buckhorn, Canada thistle, mustard, horse

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nettle, wild oats, fox tail, French weed, dock, sorrel, ragweed, and tarweed, among others. Neither do the buyers of respondents' seed profit by using such seed, nor is all of respondents' seed extra winter hardy, nor fit for winter planting, nor does all of respondents' seed come from the area or section represented by respondents, nor are orders for seed given to respondents absolutely safe, nor do respondents take the very best possible care of orders received, nor can users of farm seed absolutely depend upon the seed sold by respondents.

PAR. 5. The acts and practices of the respondents, as hereinabove alleged, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing and consuming public; and have caused and do cause such purchasers and consumers erroneously to believe that said exaggerated, false, and misleading statements and representations are true, and cause a substantial portion of such purchasers and consumers, because of such erroneous belief, to purchase respondents' seed, thereby diverting trade to the respondents from their competitors who do not make exaggerated, false, and misleading statements and representations in the sale of their seed, resulting in substantial injury to such competitors in said commerce and to the injury of the public.

Respondents have also placed in the hands of agents, salesmen, representatives, retailers, and dealers located in the several States in which they operate, and in the District of Columbia, the means of making such false and misleading representations, as above described, to the purchasing public, by which means or sales plans, or any of them, they have increased their own sales of said farm seed, so dishonestly advertised or represented, thereby lessening the market for similar seed sold by other dealers in seed, the true kind and quality of which is honestly stated.

PAR. 6. Farm seed of sundry competitors of respondents, likewise engaged in commerce, as herein set out, is and has been sold and distributed to the consuming public in the various States of the United States and in the District of Columbia in competition with respondents' farm seed, but without such false and fictitious representations as set out and described in paragraph 3 hereof.

PAR. 7. The above and foregoing acts, practices, and representations of the respondents have been and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been and are unfair methods of competition within the meaning and intent 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 7, 1936, issued, and on July 10, 1936, served its complaint in this proceeding upon the respondents American Field Seed Co., a corporation, also doing business under the firm name and style of Sun-Field Seed Service and Standard Seed Co., and Ernest E. Elder as president of American Field Seed Co., and individually, and J. F. Sinn as vice-president and treasurer of American Field Seed Co., and individually, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by J. Arthur Miller, attorney for respondents, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and counsel for the respondents, and the Commission having duly considered the same 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, American Field Seed Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located at 1929 West Forty-third Street in the city of Chicago, State of Illinois. Respondent, American Field Seed Co., also does business under the trade names of Sun-Field Seed Service and Standard Seed Co. at the same address. These unincorporated companies are used by respondent, American Field Seed Co., for the purpose of transacting certain phases of its business.

Respondent, Ernest E. Elder, also of 1929 West Forty-third Street, Chicago, Ill., is president of respondent, American Field Seed Co. and respondent J. F. Sinn, is vice president and treasurer of said company. These individual respondents control, dominate, manage,

and operate the business activities of respondent, American Field Seed Co. and the unincorporated companies, Standard Seed Co. and Sun-Field Seed Service.

PAR. 2. All respondents have for some time been engaged in the business of selling and distributing in interstate commerce agricultural seed. Among the seed sold by them are oats, wheat, barley, rye, and corn and other types of seed, such as alfalfa, red clover, alsike clover, sweet clover, and grasses of various types and varieties.

PAR. 3. Respondent, American Field Seed Co., trading as such, is a mail-order concern advertising its seed by use of annual catalogs which are distributed to farmers and others located throughout the United States. These catalogs are sent direct to farmers and those desirous of purchasing seed and they in turn send in their order to respondent company and the seed is shipped to them. Respondent, American Field Seed Co. employs no agents in the conduct of its business under the name of American Field Seed Co., but relies entirely on its catalogs and other advertising matter to effect sales. Approximately 100,000 of these catalogs are distributed each year by the company. The catalogs describe the quality and type of the seed offered for sale for the year and quotes prices thereof.

Respondent, American Field Seed Co., trading as the Standard Seed Co., does a wholesale business in seed and sells its products to the dealer trade and to local retail merchants.

Respondent, American Field Seed Co., trading as Sun-Field Seed Service, employs the services of agents for the purpose of selling its seeds by personal contact with purchasers and prospective purchasers. These agents are usually retired farmers and are equipped by Sun-Field Seed Service with samples, price lists, and various types of literature for use in soliciting its various products.

PAR. 4. Respondents cause their products when sold to be transported from their place of business in Chicago, Ill., to purchasers thereof located at various places in States other than the State of Illinois as well as to purchasers in said State, and respondents maintain a constant current of trade and commerce in said seed sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 5. Other persons, firms, associations, and corporations are engaged in offering for sale, selling, and transporting in commerce between and among the various States of the United States, like and competitive seed used by farmers for planting and sowing for ultimate growth and development of farm crops, and respondents are in substantial competition with these concerns.

PAR. 6. For more than 1 year last past and specifically in its catalogs, published in and for the years 1934, 1935, and 1936, and distributed by it throughout the various States of the United States as aforesaid, respondents, American Field Seed Co., has made statements concerning the grade and quality of its various types of seed and the manner in which it tags or labels said seed. The catalogs also contain statements concerning the length of time respondent, American Field Seed Co., has been engaged in the seed business and also statements concerning its methods of buying, cleaning, and analyzing seeds. These statements are, in many particulars, false and misleading and have a tendency to mislead and deceive purchasers and prospective purchasers of such seed.

PAR. 7. In its mail-order catalogs distributed by respondent, American Field Seed Co., during the years, 1934, 1935, 1936, the following representations were made:

American Field Seed Company, Chicago, Illinois. Founded 1915.

The American Field Seed Company was established in 1915.

We are a well-established firm and have been in the same location for 19 years.

Respondent, American Field Seed Co., was not in existence in the year 1915 and did not come into being until it was organized under the laws of Illinois in the month of July 1922.

PAR. 8. In the 1934, 1935, and 1936 catalogs, respondent represented and guaranteed its seed to be of high germination and high purity, and this statement of guaranty applies to all seed sold by them. Said statement is and was, in fact, untrue in that the seed was, and is, not all of high germination and high purity as shown by analyses made of various samples by the State seed departments of certain States.

PAR. 9. In the same catalogs respondents represent that they purchase only good seeds and call attention to the alleged fact that the seed is recleaned and is relatively free from weed seed. Such statements are false and misleading in that respondent's seed does, in fact, contain considerable quantities of weed seed, including noxious seeds, as well as other foreign matter.

PAR. 10. In the 1934 and 1935 catalogs of respondent, American Field Seed Co., it is stated and represented that all seed sold and offered for sale by the company was first cleaned by the company with its own cleaning equipment. In truth and in fact respondent does not clean all of the seed which it sells or offers for sale, but purchases quantities of seed, which have already been cleaned, from companies engaged in the seed business. This seed is not recleaned by respondent before sale to its customers.

PAR. 11. In the 1934, 1935, and 1936 catalogs, it is stated and represented that all seeds sold or offered for sale by respondent, American Field Seed Co., is analyzed and tested in its own seed-

testing laboratory, by its own experts in charge of the laboratory. In fact, some of respondent's seed is purchased from other companies and sold by respondent to customers without being tested and analyzed by respondent in their own seed-testing laboratory.

PAR. 12. In the 1934, 1935 catalogs, respondents stated and represented that they labeled and tagged shipments of seed in conformity to the laws of the States into which the seed is sold and shipped. Respondents admitted that they made no effort to comply with the provisions of the laws of the various States. In fact, many of respondent's shipments of seed into the State of Indiana and other States do not comply with the seed law of the States, in that the shipments are not tagged and labeled as required by the laws of the States.

PAR. 13. In the year 1934 respondent, American Field Seed Co., trading as Sun-Field Seed Service, solicited orders from seed dealers and retail grain dealers in the State of Kansas in connection with the sale of a variety of oat, designated "New Victory." Respondents represented to prospective purchasers of said "New Victory" oats that the oats were winter oats and if planted in the late fall in the State of Kansas would grow through the winter. Respondents further represented to customers and prospective customers that said oats would flourish and grow in the State of Kansas in temperatures as low as 11° below zero. In fact, the oats were not winter oats in the State of Kansas and when planted "winter killed" after temperatures as low as 2° below zero. There is no variety of oat that will grow through the wintertime in the State of Kansas.

Respondents further represented that the yield of said oats after planting would be luxuriant and abundant. In fact said oats produced no crop at all for the reasons set forth above and the planting of the same by respondents' customers resulted in considerable financial loss to them.

PAR. 14. Respondents further represented that the stock from which said "New Victory" oats were obtained were grown within 90 miles of the city of Chicago. In fact, said oats, or the stock from which they were obtained, were not developed or grown within 90 miles of the city of Chicago and the oats were grown and came from places in States far distant from the State of Illinois.

PAR. 15. Respondents, in preparing seed for shipment to purchasers, attach to bags and containers of such seed tags and labels which bear printed or written markings setting forth the percentage of purity and germination of the seed.

In the annual catalogs for the years 1934, 1935, and 1936, statements are made by respondents to the effect that all seed offered for sale by them is tested with "painstaking" accuracy by experts in

their seed testing laboratory. In the same catalogs customers and prospective customers are advised that each shipment of seed is tagged and labeled and that customers can rely upon the representations appearing on the tags or labels.

Respondents' customers do rely upon the statements of percentage of germination and purity set forth on the tags and labels attached to said shipments, and these customers when ordering seeds from respondents are entitled to receive seed which measures up to the representations of percentage of germination and purity set forth on the tags and labels attached to said containers of seed within "tolerances and allowances."

Under the most perfect and approved conditions of testing seeds, variations will occur in purity and germination tests. For this reason, the Association of Official Seed Analysts of North America, an association comprised of the officials chargeable with the enforcement of the seed laws of the various States and of the United States, has adopted tolerances or allowances for purity and germination tests. These standards of tolerances or allowances are recognized by the seed trade in testing and marking the percentage of germination and the percentage of purity of the seed on the tags and labels attached to containers of seed. Commercial seed analysts, that is, analysts in the employ of private seed vending companies, follow these standards of testing and marking seed. These tolerances are as follows:

(a) *Purity tolerance.*—In determining the tolerance for purity the samples are considered as being composed of two parts:

- (1) Pure seed of the kind certified, and
- (2) Everything not pure seed.

The tolerance permitted is two-tenths of 1 percent (0.2 percent) plus 20 percent of the lesser part.

Example: Seed marked 98 percent pure, the lesser part is 100 minus 98, or 2. 20 percent of 2 equals 0.4. Therefore, the tolerance allowed would be 0.2 plus 0.4, or 0.6 percent.

(b) *Germination tolerance.*—A larger tolerance is applied between a given germination and the result of the germination tests as follows:

Given germination (percent) :	Allowable germination (percent)
90 or over.....	6
80 or over but less than 90.....	7
70 or over but less than 80.....	8
60 or over but less than 70.....	9
Less than 60.....	10

PAR. 16. The testimony shows and the Commission finds that respondents have shipped seed into States other than the State of Illinois which, upon analysis by State seed-law enforcement agencies,

was found to be of low germinating power, and was further found to be misbranded under the laws of said States in that the seed did not germinate within the recognized tolerances or allowances.

The following shipment of seed by respondent American Field Seed Co., doing business as Standard Seed Co., is typical of a number of seed shipments into the State of Indiana on which were attached tags and labels misrepresenting the germinating power of seed:

On February 19, 1935, respondent American Field Seed Co., doing business as Standard Seed Co., shipped "Sweet Clover" to S. F. Trembley Company of Columbia City, Ind., and on tags and labels attached to said shipment represented the germination of the seed to be 92 percent. Upon analysis by the Indiana State Seed Department, it was found that the germination of the seed was not 92 percent but was 65.25 percent.

The testimony also shows and the Commission finds that many of the shipments of respondents' seed contained tags and labels upon which were set forth statements of the purity contents of said seed, and that said statements were false, in that the purity of the seed was substantially lower than represented by respondents, and not within recognized tolerances or allowances.

The Commission finds that the following is typical of a number of shipments of seed into the State of Indiana, on which were attached tags and labels representing the purity of the seed to be much higher than the actual purity of the same:

On February 1, 1935, respondent American Field Seed Co., doing business as Sun-Field Seed Service, shipped nine bags of "New Victory" seed oats to Noblesville Milling Co. of Noblesville, Ind., and on tags and labels attached to said shipment represented the purity of the seed to be 99.50 percent. Upon analysis by the Indiana State Seed Department, it was found that the purity of the seed was not 99.50 percent but was 96.66 percent. The State department further found that the seed contained weed seeds and other agricultural seeds.

PAR. 17. The use by respondents of the acts and practices above set forth, in offering for sale and selling its said products, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondents' seed, with the result that trade has been unfairly diverted to respondents from their competitors who truthfully represent the seed they offer for sale and sell.

CONCLUSION

The aforesaid acts and practices of respondents as hereinabove named, are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, and oral arguments before the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered. That respondents, American Field Seed Co., a corporation, also doing business under the firm name and style of Sun-Field Seed Service, and Standard Seed Co., its officers, representatives, agents and employees, and Ernest E. Elder, as president of American Field Seed Co. and individually, and J. F. Sinn, as vice president and treasurer of American Field Seed Co. and individually, in connection with offering for sale, sale, and distribution of agricultural seed, in interstate commerce, do forthwith cease and desist from representing, directly or by implication—

1. That respondent, American Field Seed Co. was founded or engaged in business prior to the year it was incorporated under the laws of the State of Illinois;

2. (a) That respondents' seed is free from weed seed and other foreign matter; (b) that all of the seed is cleaned by respondents with their own seed-cleaning equipment; (c) that all of the seed is analyzed and tested by respondents in their own seed-testing laboratory; (d) that all of the seed is tagged and labeled in accordance with the laws of the State into which the seed is shipped; (e) that seed is cold-resisting or will survive cold temperatures; (f) that seed will produce abundant or luxuriant growth of crops; (g) that seed originated in certain areas or certain States; when such are not the facts.

3. That seed has a higher percentage of germination and purity than the actual germination and purity of the seed, under recognized tests and within recognized tolerances or allowances.

It is further ordered. That the respondents shall, within 60 days after the service upon them of this order, file with the Commission a reply in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
NATIONAL SILVER COMPANY, SAMUEL E. BERNSTEIN,
PHILIP J. BERNSTEIN, MORTON BERNSTEIN, MILTON
BERNSTEIN, BERNARD BERNSTEIN, HARRY S. BERK,
AND STELLA BERK

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3162. Complaint, Apr. 19, 1938¹—Decision, July 29, 1938²

Where a corporation, engaged in the offer and sale of silver-plated flatware, controlled and directed, as respects said part of its business and the matters and things hereinbelow set forth, by an individual who was its vice president and sales manager and in charge of its silver-plated flatware department, and in its aforesaid business selling and distributing such silver-plated ware to dealers and users, including retail department stores, jewelry stores, and other purchasers, and making use of a large number of different patterns and brands, including, as typical, its "King Edward," "Devotion," "Condor," "Caroline," and "Josephine"; in promoting the sale of and selling its aforesaid patterns, both in those wares sold by it in sets of various sizes and in the case of those sold by the individual piece, i. e., its "open stock"—

- (a) Distributed to retail dealers and to the purchasing public price lists, which designated retail prices for its silver-plated wares which were greatly in excess of their reasonable or normal retail values or prices, and of any expected or anticipated retail prices therefor, and greatly in excess of those at which its said products were regularly and actually sold at retail, and published and distributed among its retail customers, as a part of its plan to induce purchase of its said wares on the part of the purchasing and consuming public in the belief that such normal retail prices were greatly in excess of those at which such articles were then being offered to the public at retail, circulars describing its "half-price sales plan," in which it invited the cooperation of its said customers and under which its aforesaid price lists were continued, notwithstanding a very great discount therefrom to its said dealers amounting to 60 percent plus 40 percent in the case of one of such wares and 50 percent plus 40 percent in the case of other wares, and whereby the said retail dealers were enabled to offer and feature the so-called "half-price sales" at a profit;

With the result that by reason of such discount and the continuation thereof, a normal and usual retail price for its said wares was established, at which price they were being ordinarily sold, namely, that alleged to be half-price, and aforesaid list prices, continued without change by it, did not represent its customary retail sales prices, or the actual or normal price at which said ware was being sold, or was intended to be sold, to the purchasing and consuming public, as stated in such advertising and price lists, and with effect of misleading purchasing public as to usual and actual retail prices thereof, and with further effect of misleading

¹ Amended and supplemental.

² Order published as modified Nov. 3, 1938.