

IN THE MATTER OF
COLUMBIA ALKALI CORPORATION, DOW CHEMICAL
COMPANY, MICHIGAN ALKALI COMPANY, SOLVAY
SALES CORPORATION, SOLVAY PROCESS COMPANY,
AND CALCIUM CHLORIDE ASSOCIATION

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

Docket 3519. Complaint, July 30, 1938—Decision, Dec. 13, 1938

Where three corporations which (1), along with fourth, constituted only manufacturers of flake calcium chloride in the United States, and also manufacturers of over 75 percent of all other forms of such substance, and which (2), together with sales subsidiary of said fourth corporation, controlled sale and distribution of a substantial majority of the entire output of all forms of calcium chloride in commerce among the various States and in the District of Columbia; and said selling subsidiary; in active and substantial competition with one another in making and seeking to make sales of calcium chloride in various forms in commerce as aforesaid, prior to, and but for, acts and practices below set forth—

- (a) Entered into and carried out understandings, agreements, combinations, and conspiracies with intent and effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in sale of said product in trade and commerce as aforesaid; and in pursuance of said understandings, etc., and in furtherance thereof—

1. Agreed to and did fix and maintain uniform prices in sale of said substance in various forms in the United States; and, in order better to effectuate such agreement—

2. Agreed to and did maintain uniform zoning system therein, and suggest retail prices to individual dealers or distributors, and exchange information with respect to prices each was to charge for said substance as aforesaid; and

3. Agreed to and did exchange information with respect to prices each charged therefor as aforesaid, and did change, simultaneously, their sales prices for such substance as aforesaid, and offer identical bids for carload and less than carload lots thereof to prospective purchasers; and

- (b) Agreed to and did, during period aforementioned, eliminate cash discounts for prompt payment by purchasers of such products as aforesaid, and agreed to and did couple with increase of budget for 1938 of their trade association identical raises in prices of said substance as aforesaid;

With dangerous tendency to hinder and prevent, and with effect of hindering and preventing, price competition between and among them in sale of said calcium chloride in various forms, and of placing in them power to control and enhance prices:

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

Mr. Fletcher G. Cohn for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for Columbia Alkali Corp.

Mr. Calvin A. Campbell, of Midland, Mich., for Dow Chemical Co.

Lewis & Watkins, of Detroit, Mich., for Michigan Alkali Co.

Miller, Owen, Otis & Bailly, of New York City, for Solvay Sales Corp. and Solvay Process Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co., Solvay Sales Corporation, Solvay Process Co., and Calcium Chloride Association, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Columbia Alkali Corporation, is a corporation organized, existing, and doing business by virtue of the laws of the State of Ohio, with its principal office and place of business located at Barberton, Ohio. It manufactures calcium chloride and sells same through distributors located in various States of the United States.

Respondent, Dow Chemical Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Michigan, with its principal office and place of business located at Midland, Mich. It is engaged in the manufacture and sale of a diversified line of chemicals, including calcium chloride.

Respondent, Michigan Alkali Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Michigan, with its principal office and place of business located at Wyandotte, Mich. It is engaged in the manufacture and sale of calcium chloride.

Respondent, Solvay Sales Corporation, is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at Syracuse, N. Y.

Respondent, Solvay Process Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at Syracuse, N. Y.

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Respondent, Solvay Sales Corporation, is a wholly owned subsidiary of respondent, Solvay Process Co., and it purchases certain products, including calcium chloride from the Solvay Process Co., for resale. The Solvay Process Co. sells and delivers its output of calcium chloride to Solvay Sales Corporation, at the plant of the Solvay Process Co., in Syracuse, N. Y., where said calcium chloride is produced. Shipments of calcium chloride are made by Solvay Sales Corporation, from Syracuse, N. Y., directly to customers or to stock points of Solvay Sales Corporation.

Respondent, Calcium Chloride Association, hereinafter referred to as the respondent "association," is an unincorporated trade association, with its office and principal place of business located at 4145 Penobscot Building, Detroit, Mich. Its membership is composed of respondents, Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co. and Solvay Sales Corporation, hereinafter referred to as respondent "members."

PAR. 2. Respondents, Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co., and Solvay Process Co., are the only calcium chloride manufacturers in the United States and with Solvay Sales Corporation control the entire output of same.

PAR. 3. Respondent association was organized on January 1, 1933. The avowed activities of respondent association consist of direction and control of advertising, publicity, research, and engineering promotion of the various uses of calcium chloride, which are principally for dust-laying and stabilization in road building, ice control, curing concrete for roads, and treatment of dustless coal and brine for refrigeration. Prior to its formation, respondent members had a publicity committee which performed some of the same functions as the association now performs along trade promotional lines.

The operating expenses of respondent association are prorated among respondent members according to the estimated yearly income of each respondent member; respondent members, Dow Chemical Co. and Solvay Sales Corporation, pay 32½ percent each of said expenses, and respondents, Columbia Alkali Corporation and Michigan Alkali Co., pay 17½ percent each of said expense.

In addition to paying their proportionate shares of the expenses of respondent association, respondent members, Solvay Sales Corporation, Columbia Alkali Corporation and Michigan Alkali Co., pay into a patent fund of respondent association \$12,500 annually. Respondent, Dow Chemical Co., owns certain patent rights to a process for manufacturing calcium chloride, and the other three respondent members of respondent association, in exchange for the right to use this process, pay the aforementioned sum annually into

the patent fund of respondent association, which is part of the general fund of respondent association.

The executive committee of respondent association is composed of a representative of each respondent member, which representative is either the sales manager or assistant sales manager of a respondent member; said executive committee meets monthly.

PAR. 4. In the course and conduct of their respective businesses, respondent members and respondent, Solvay Process Co., acting directly and through and by means of respondent, Solvay Sales Corporation, have made, and are making or causing to be made, numerous shipments of calcium chloride from the States of Ohio, Michigan, and New York, where the respondent members manufacture or cause to be manufactured calcium chloride, to purchasers thereof located in States of the United States other than the aforementioned States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said calcium chloride, sold, and distributed by them, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter alleged, respondent members and respondent, Solvay Process Co., in the manner aforementioned, were in active and substantial competition with each other in making and seeking to make sales of calcium chloride in commerce between and among the several States of the United States and in the District of Columbia, and, but for the facts hereinafter alleged, such active and substantial competition would be continued to the present time.

PAR. 6. The Solvay Process Co., acting directly and through its aforementioned relationship with Solvay Sales Corporation, and respondent members, all acting directly and through and by means of respondent association and by other means and methods, during the year 1935 entered into, and thereafter carried out understandings, agreements, combinations, and conspiracies, for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of calcium chloride in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. Pursuant to said understandings, agreements, combinations and conspiracies, and in furtherance thereof, said respondent members and respondent, Solvay Process Co., acting directly and through and by means of respondent, Solvay Sales Corporation, have done and

performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and have agreed and maintained uniform prices in the sale of calcium chloride in the United States;

2. In order to better effectuate the said agreement to fix and maintain uniform prices in the United States for the sale of calcium chloride,

(a) Agreed to maintain, and have maintained, a uniform zoning system for the United States.

(b) Agreed to suggest, and have suggested, retail prices to their individual dealers or distributors.

(c) Agreed to exchange, and have exchanged, information with reference to the prices each charges for calcium chloride.

(d) Agreed to exchange, and have exchanged, information as to their yearly distributions of calcium chloride.

(e) Agreed to change simultaneously, and have changed simultaneously, in the same amounts, their sales prices for calcium chloride.

(f) Agreed to offer, and have offered, identical bids for carload and less than carload lots of calcium chloride to prospective purchasers.

3. Agreed during the year 1937 to eliminate, and since that time have eliminated, cash discounts for prompt payment by purchasers of calcium chloride.

4. Agreed to couple with, and did couple with, the increase of the budget for 1938 of respondent association, identical raises in the prices of calcium chloride.

5. Used, and are now using, other unlawful methods and means to restrict, restrain, suppress, prevent and eliminate competition in the sale of calcium chloride in the United States.

PAR. 8. Each of said respondent members and respondent, Solvay Process Co., acted and acts in concert and in cooperation with one or more of the other respondents, by means of and through respondent association, its officers, representatives and agents, and by other means and methods, in doing and performing the acts and practices hereinabove alleged, in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 9. The acts and practices of the respondents herein alleged are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, price competition between and among respondents, Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co., Solvay Sales Corporation, and Solvay Process Co., in the sale of calcium chloride

in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of calcium chloride in such commerce; have unreasonably restrained such commerce in calcium chloride, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 30th day of July 1938, issued and served its complaint in this proceeding upon respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., Solvay Sales Corporation, Solvay Process Co. (The Solvay Process Co.), and Calcium Chloride Association, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 24, 1938, all of the aforementioned respondents filed their answers. In the answers of respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., and Solvay Sales Corporation, they admitted, with respect to the period extending from November 1937 through January 1938, all the material allegations of fact set forth in said complaint, except that they severally denied that any of the acts and practices charged in the complaint were done or performed through or by means of respondent, Calcium Chloride Association; said answers further provided that said respondents severally waived all intervening procedure and further hearing as to the facts. The answers of respondents, Calcium Chloride Association and Solvay Process Co., severally denied all the material allegations of the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Columbia Alkali Corporation, is a corporation organized, existing, and doing business by virtue of the laws of the State of Ohio, with its principal office and place of business located at Barberton, Ohio. It manufactures calcium chloride

and sells same through distributors located in various States of the United States.

Respondent, Dow Chemical Co., whose correct legal name is The Dow Chemical Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Michigan, with its principal office and place of business located at Midland, Mich. It is engaged in the manufacture and sale of a diversified line of chemicals, including calcium chloride.

Respondent, Michigan Alkali Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Michigan, with its principal office and place of business located at Wyandotte, Mich. It is engaged in the manufacture and sale of calcium chloride.

Respondent, Solvay Sales Corporation, is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at Syracuse, N. Y.

Respondent, Solvay Process Co., whose correct legal name is The Solvay Process Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located at the village of Solvay, town of Geddes, within the metropolitan district of Syracuse, N. Y.

Respondent, Solvay Sales Corporation, is a wholly owned subsidiary of respondent, Solvay Process Co., and purchases certain products, including calcium chloride, from respondent, Solvay Process Co., for resale. Respondent, Solvay Process Co., sells and delivers its output of calcium chloride to respondent, Solvay Sales Corporation, at the plant of respondent, Solvay Process Co., in Geddes, N. Y., where said calcium chloride is produced. Shipments of calcium chloride are made by respondent, Solvay Sales Corporation, from Geddes, N. Y., directly to customers or to stop points of respondent, Solvay Sales Corporation.

Respondent, Calcium Chloride Association, hereinafter referred to as the "Association," is an unincorporated trade association, with its principal office and place of business located at 4145 Penobscot Building, Detroit, Mich. Its membership is composed of respondents, Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co., and Solvay Sales Corporation, hereinafter referred to as "respondent members."

PAR. 2. The record does not show that respondents, Solvay Process Co. and Calcium Chloride Association, have any connection with the unlawful acts and practices alleged in the complaint.

PAR. 3. Respondents, Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co. and Solvay Process Co. are the only manu-

facturers of flake calcium chloride in the United States and also manufacture over 75 percent of all other forms of calcium chloride. Respondent, Solvay Process Co., sells its entire output of all types of calcium chloride to respondent, Solvay Sales Corporation, at its plant at Geddes, N. Y. Respondents, Columbia Alkali Corporation, Dow Chemical Co., Michigan Alkali Co. and Solvay Sales Corporation control the sale and distribution of a substantial majority of the entire output of all forms of calcium chloride in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses, respondent members have made, and are making or causing to be made, numerous shipments of calcium chloride in various forms from the States of Ohio, Michigan, and New York, where respondent members manufacture or cause to be manufactured such calcium chloride, to purchasers thereof located in States of the United States other than the aforementioned States and in the District of Columbia. Respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said calcium chloride in various forms, sold, and distributed by them, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter set forth, respondent members, in the manner aforementioned, were in active and substantial competition with each other in making and seeking to make sales of calcium chloride in various forms in commerce between and among the several States of the United States and in the District of Columbia, and, but for the facts hereinafter set out, such active and substantial competition would have continued during the period hereinafter set out.

PAR. 6. Respondent members, during a period of time extending from November 1937 through January 1938 entered into and carried out understandings, agreements, combinations, and conspiracies, for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of calcium chloride in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members, during the aforementioned period extending from November 1937 to January 1938, agreed to fix and maintain, and did so fix and

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maintain, uniform prices in the sale of calcium chloride in various forms in the United States. In order to better effectuate said agreement, they agreed to maintain, and did maintain, a uniform zoning system in the United States. They also agreed, for this same purpose of carrying out their agreement to fix and maintain such uniform prices, to suggest, and did suggest, retail prices to the individual dealers or distributors, to exchange, and did exchange, information with respect to the prices each was to charge for calcium chloride in various forms. Further, to carry out the same purpose to fix and maintain uniform prices, they agreed to exchange, and did exchange, information with respect to the prices each charged for calcium chloride in various forms and to change simultaneously, and did so change simultaneously, in the same amounts, their sales prices for calcium chloride in various forms and to offer, and they did offer, identical bids for carload and less than carload lots of calcium chloride in various forms to prospective purchasers. These respondent members agreed, during the aforementioned period, to eliminate, and did eliminate, cash discounts for prompt payment by purchasers of calcium chloride in various forms, finally, they agreed, during this same aforementioned period, to couple with, and did couple with, the increase of the budget for 1938 of respondent Association, identical raises in the prices of calcium chloride in various forms.

PAR. 8. Each of said respondent members acted in concert and in cooperation with one or more other respondent members in doing and performing the acts and practices hereinabove set forth in furtherance of said understandings, agreements, combinations, and conspiracies.

CONCLUSION

The aforesaid acts and practices of respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., and Solvay Sales Corporation, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have so hindered and prevented, price competition between and among said respondents, in the sale of calcium chloride in various forms in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in said respondents the power to control and enhance prices; 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 and the answers of

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respondents, in which answers respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., and Solvay Sales Corporation, admit, with respect to the period extending from November 1937 through January 1938, all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and in which answers respondents, Solvay Process Co. (The Solvay Process Co.), and Calcium Chloride Association, each deny that they were parties to any of the unlawful acts and practices alleged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., and Solvay Sales Corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., and Solvay Sales Corporation, and their respective successors and assigns, officers, representatives, agents, and employees, directly or indirectly, or through or by means of any association, its officers, representatives and agents, or by any other means, in connection with the offering for sale, sale and distribution of calcium chloride in any form in interstate commerce or in the District of Columbia, do forthwith cease and desist from doing by agreement, combination, or conspiracy between or among any two or more of said respondents, or between or among any one of said respondents and any other competing manufacturer or distributor of calcium chloride in any form, the following acts and things:

1. Fixing or maintaining uniform prices in the sale of calcium chloride in any form in the United States;

2. (a) Maintaining a uniform zoning system for the United States, (b) suggesting retail prices to their individual dealers or distributors, (c) exchanging information with reference to the prices each charges for calcium chloride, (d) changing simultaneously their sales prices for calcium chloride in any form, (e) offering identical bids for carload or less than carload lots of calcium chloride in any form to prospective purchasers when any or all of said acts are done for the purpose of effectuating any agreement, combination or conspiracy to fix or maintain uniform prices in the United States for the sale of calcium chloride in any form;

3. Eliminating cash discounts for prompt payment by purchasers of calcium chloride;

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to the respondents, Sol-

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vay Process Co. (The Solvay Process Co.) and Calcium Chloride Association, but without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure;

It is still further ordered, That the respondents, Columbia Alkali Corporation, Dow Chemical Co. (The Dow Chemical Co.), Michigan Alkali Co., and Solvay Sales Corporation, shall each, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

MORRIS R. SHAPIRO, CHARLES SHAPIRO, MARY SHAPIRO, AND MRS. ROBERT SHAPIRO, TRADING AS UCA MANUFACTURING COMPANY, UCA MENTHO COMPANY, UCA MENTHO LABORATORIES, AND ROBERT MORE COMPANY

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

Docket 3191. Complaint, July 29, 1937—Decision, Dec. 14, 1938

Where partners engaged in sale and distribution of miscellaneous line of merchandise such as knives, dental cream, musical instruments, toys, and proprietary preparations, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products and of products and preparations designed for similar usage in commerce as aforesaid set forth, and including those engaged in sale and distribution of remedies or treatments for certain ailments for which they advertised their preparations and who do not misrepresent the therapeutic qualities or values of their said products; in pamphlets advertising preparations sold by them as "Uca Mentho Salve" and "Uca Vapor Balm," ingredients of which, in different quantities, were substantially the same, and in other advertising matter—

- (a) Represented that said salves possessed healing qualities and constituted effective remedies and cures for eczema, sore throat, colds, cuts, burns, chapped hands and lips, asthma, catarrh, sores, earaches, rheumatism, bronchitis, fever blisters, frost bites, pimples, boils, piles, ivy poisoning, erysipelas, prickly heat, tetter, and chafing, facts being conditions aforesaid arise from many causes and, in many instances, are due to or associated with systemic or organic derangement, effective treatment of which requires treatment of cause or causes and thorough diagnosis by expert to ascertain same and proper treatment therefor, not all ailments and disorders of surface or temporary character only, and without systemic or organic origin or connection, can, due to varying causes thereof, be effectively treated in same way and by same medicine, they had no expert connected with them or in their employ to make diagnosis and prescribe necessary treatments in case of ailments and conditions due to or associated with systemic or organic derangement, and said salves were not, as claimed as aforesaid, effective remedies or cures for ailments and disorders set forth;
- (b) Made use of word "Laboratories" in sale of salves in question, facts being, while ingredients from which same were compounded were mixed in vats under supervision of one of partners who had had long years of practical experience in such matters but was not a chemist, place wherein such salves were thus made as aforesaid was not a place devoted to experimental study in some branch of science or to application of scientific principles in testing and analyzing or to similar work, or laboratory, as long understood by purchasing public;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of substantial quantities of their said products by reason