

Syllabus

IN THE MATTER OF

MATHIESON ALKALI WORKS, INC., ET AL.

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

Docket 3317. Complaint, Jan. 31, 1938—Decision, Dec. 16, 1938

Where nine corporations engaged in the manufacture of liquid chlorine for commercial purposes, and in the sale thereof directly and through sales agents to purchasers, including towns, cities, and other municipalities, State governments and divisions thereof, Federal Government and divisions thereof, and State and Federal institutions, and representing, in their output, substantially all the liquid chlorine made for commercial and industrial purposes in the United States and sold therein since 1930, and since said year only regular source of supply for purchasers of said product, and prior to 1931, and still, but for acts below set forth, in competition as to price with one another in sale of said product among the various States, Territories and District of Columbia—

Entered into, carried out, and continued to carry out agreement, combination, understanding, and conspiracy among themselves to fix and maintain enhanced uniform prices to be exacted by them from purchasers of such liquid chlorine in commerce among the various States and in said District; and in pursuance of said agreement, etc., and agreements made so to do—

1. Fixed and maintained uniform prices for liquid chlorine sold by them and by each of them; and

2. Divided United States into zones for which they fixed and maintained enhanced uniform prices to be exacted from their purchasers of said product;

With a dangerous tendency to, and with result of, actually hindering and preventing price competition in sale thereof in commerce as aforesaid, increasing prices paid by purchasers thereof, creating in themselves monopoly in sale of said product and in interstate commerce, and of unreasonably restraining such commerce; all to the prejudice of competitors and to the injury of the public:

Held, That such acts and practices constituted unfair methods of competition in commerce within intent and meaning of Federal Trade Commission Act.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Edward L. Smith for the Commission.

Chadbourn, Wallace, Parke & Whiteside, of New York City, for Mathieson Alkali Works, Inc.

Root, Clark, Buckner & Ballantine, of New York City, for The Electro Bleaching Gas Co.

Miller, Owen, Otis & Bailly, of New York City, for Solvay Sales Corporation.

Sage, Gray, Todd & Sims, of New York City, for The Hooker Electrochemical Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for The Diamond Alkali Co.

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Avis & Angel and *Mr. A. S. Alexander, Jr.*, of Charleston, W. Va., for The Belle Alkali Co.

Mr. William W. Schneider and *Mr. Charles E. Caspari, Jr.*, of St. Louis, Mo., for The Monsanto Chemical Co.

Montgomery & McCracken, of Philadelphia, Pa., for Pennsylvania Salt Manufacturing Co.

Mr. Sidney G. DeKay and *Wright, Gordon, Zachry & Parlin*, of New York City, for The Columbia Alkali Corporation.

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 Mathieson Alkali Works, Inc., The Electro Bleaching Gas Co., Solvay Sales Corporation, The Hooker Electrochemical Co., The Diamond Alkali Co., The Belle Alkali Co., The Monsanto Chemical Co., Pennsylvania Salt Manufacturing Co., and The Columbia Alkali Corporation, hereinafter referred to as respondents, have been and now 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 it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. All of the respondents are corporations organized, existing, and doing business under and by virtue of the laws of the States hereinafter mentioned and with their principal places of business in the cities hereinafter mentioned, to wit:

<i>Name of respondent and State of incorporation</i>	<i>Principal place of business</i>
Mathieson Alkali Works, Inc., Virginia.....	New York City, N. Y.
The Electro Bleaching Gas Co., New York.....	New York City, N. Y.
Solvay Sales Corporation, New York.....	New York City, N. Y.
The Hooker Electrochemical Co., New York.....	New York City, N. Y.
The Diamond Alkali Co., Delaware.....	Pittsburgh, Pa.
The Belle Alkali Co., West Virginia.....	Belle, W. Va.
The Monsanto Chemical Co., Missouri.....	St. Louis, Mo.
Pennsylvania Salt Manufacturing Co., Pennsylvania.....	Philadelphia, Pa.
The Columbia Alkali Corporation, Ohio.....	New York City, N. Y.

PAR. 2. Said respondents are now and since their organizations have been engaged in the manufacture, at their respective places of business, of liquid chlorine for commercial purposes and in the sale thereof directly and through sales agents to the purchasers thereof, an important class of such purchasers being towns, cities, and other municipalities, State governments and divisions thereof, the Federal

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Government and divisions thereof, and State and Federal institutions. In the course and conduct of their businesses all of the said respondents for more than 5 years last past have caused and still cause such liquid chlorine when sold by them, to be transported in interstate commerce from their respective places of business to, into, and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom said liquid chlorine is and has been sold. The amount of liquid chlorine manufactured for commercial and industrial purposes and sold by the respondents directly and through sales agents constitutes and at all times since 1930 has constituted substantially all the liquid chlorine manufactured for commercial and industrial purposes in the United States and sold therein. Purchasers of liquid chlorine have no regular source of supply, excepting from the respondents, and since 1930 have had no regular source of supply of liquid chlorine excepting from the respondents.

The respondents were prior to 1931 in competition as to price with one another in the sale of liquid chlorine between and among the various States of the United States, the Territories thereof, and the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since 1931 and would now be in such competition with one another.

PAR. 3. In 1931 said respondents for the purpose of eliminating price competition among themselves entered into, have since carried out, and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained enhanced uniform prices to be and which have been and are still being exacted by them from their purchasers of liquid chlorine in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid agreement, combination, understanding, and conspiracy, the said respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform prices for liquid chlorine sold by them and by each of them;

(b) Agreed to divide, and pursuant to such agreement, have divided the United States into zones, for which zones the respondents have by agreement fixed and maintained and still fix and maintain enhanced uniform prices exacted by them from their purchasers of liquid chlorine.

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PAR. 4. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondents, have a dangerous tendency and have actually hindered and prevented price competition in the sale between and among the various States of the United States, the Territories thereof, and in the District of Columbia of liquid chlorine; have increased the prices of liquid chlorine paid by purchasers thereof, an important class of such purchasers being towns, cities, and other municipalities, State governments and divisions thereof, the Federal Government and divisions thereof, and State and Federal institutions, and consequently by the public; have created in the respondents a monopoly in the sale in interstate commerce of liquid chlorine; have unreasonably restrained interstate commerce in liquid chlorine and constitute unfair methods of competition in interstate commerce within the intent and meaning 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," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 31, 1938, issued, and served its complaint in this proceeding upon respondents, Mathieson Alkali Works, Inc., The Electro Bleaching Gas Co., Solvay Sales Corporation, The Hooker Electrochemical Co., The Diamond Alkali Co., The Belle Alkali Co., The Monsanto Chemical Co., Pennsylvania Salt Manufacturing Co., and The Columbia Alkali Corporation, 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' answers, the Commission, by order entered herein, granted respondents' motions for permission to withdraw said answers and to substitute therefor answers admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were 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 substitute answers, 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mathieson Alkali Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business in New York, N. Y.

Respondent The Electro Bleaching Gas Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in New York, N. Y.

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

Respondent The Hooker Electrochemical Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in New York, N. Y.

Respondent The Diamond Alkali Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business in Pittsburgh, Pa.

Respondent The Belle Alkali Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal place of business in Belle, W. Va.

Respondent The Monsanto Chemical Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business in St. Louis, Mo.

Respondent Pennsylvania Salt Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business in Philadelphia, Pa.

Respondent The Columbia Alkali Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business in New York, N. Y.

PAR. 2. Said respondents are now and since their organizations have been engaged in the manufacture, at their respective places of business, of liquid chlorine for commercial purposes and in the sale thereof directly and through sales agents to the purchasers thereof, an important class of such purchasers being towns, cities, and other municipalities, State governments and divisions thereof, the Federal Government and divisions thereof, and State and Federal institu-

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tions. In the course and conduct of their businesses, all of the said respondents for more than 5 years last past have caused and still cause such liquid chlorine, when sold by them, to be transported in interstate commerce from their respective place of business to, into and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom said liquid chlorine is and has been sold. The amount of liquid chlorine manufactured for commercial and industrial purposes and sold by the respondents directly and through sales agents constitutes and at all times since 1930 has constituted substantially all the liquid chlorine manufactured for commercial and industrial purposes in the United States and sold therein. Purchasers of liquid chlorine have had no regular source of supply except from the respondents since 1930.

The respondents were, prior to 1931, in competition as to price with one another in the sale of liquid chlorine between and among the various States of the United States, the Territories thereof, and the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since 1931, and would now be, in such competition with one another.

PAR. 3. In 1931, said respondents, for the purpose of eliminating price competition among themselves, entered into, have since carried out, and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained enhanced uniform prices to be, and which have been and are still being, exacted by them from their purchasers of liquid chlorine in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid agreement, combination, understanding, and conspiracy, the said respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform prices for liquid chlorine sold by them and by each of them;

(b) Agreed to divide, and pursuant to such agreement have divided, the United States into zones, for which zones the respondents have by agreement fixed and maintained, and still fix and maintain, enhanced uniform prices exacted by them from their purchasers of liquid chlorine.

CONCLUSION

The acts and practices of the respondents, as herein described, are all to the prejudice of competitors of the respondents and to the

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injury of the public, have a dangerous tendency to and have actually hindered and prevented price competition in the sale of liquid chlorine in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia; have increased the prices paid by purchasers for liquid chlorine; have created in the respondents a monopoly in the sale of liquid chlorine in interstate commerce as defined in the Federal Trade Commission Act; have unreasonably restrained such commerce 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 respondents, in which answers respondents admit 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 the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mathieson Alkali Works, Inc., The Electro Bleaching Gas Co., Solvay Sales Corporation, The Hooker Electrochemical Co., The Diamond Alkali Co., The Belle Alkali Co., The Monsanto Chemical Co., Pennsylvania Salt Manufacturing Co., and The Columbia Alkali Corporation, their respective officers, agents, servants, and employees, in connection with the sale and the offering for sale of liquid chlorine in commerce between and among the various States of the United States and the District of Columbia, do forthwith cease and desist from entering into any understanding, agreement, combination, and conspiracy between and among any two or more of the said respondents and from continuing any agreement, combination, understanding, and conspiracy heretofore entered into among themselves, to fix and maintain or for the purpose of fixing and maintaining uniform prices or enhanced uniform prices, or to divide the United States into zones for the sale of said product at uniform prices, or at enhanced uniform prices; provided that nothing herein contained shall prohibit the exercise by the respondents of their lawful rights under the patent laws of the United States.

It is further ordered, That the respondents shall, within 30 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 shall have complied with this order.

IN THE MATTER OF

EARL C. NOYES TRADING AS SEYON PRODUCTS COMPANY, INC., AND END-O-CORN LABORATORIES, INC.

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

Docket 3235. Complaint, Oct. 4, 1937—Decision, Dec. 21, 1938

Where an individual engaged in carrying on mail-order business in sale and distribution of his so-called "Seyon Fluid," "Seyon Ointment," and "Seyon Lax-O-Tabs," to purchasers in other States—

- (a) Represented, in various advertisements concerning said preparations in newspapers of wide general circulation and in folders, pamphlets, circulars, and other advertising matter, that said products constituted competent and effective remedies and cures for such diseases and ailments as rheumatism, neuritis, lumbago, sciatica, neuralgia, and arthritis, facts being they did not constitute such remedies or cures for any of the diseases and ailments to which the body is subject, and particularly for the various diseases set forth above, and would not relieve or stop the pain incident thereto or to such condition;
- (b) Represented, as aforesaid, that said "Seyon Ointment" was a competent and effective preventive of colds and competent and effective treatment and remedy for headaches and head and chest colds, facts being it was not such a preventive or remedy for said ailments and conditions and had no effect whatever on the causative factors of either colds or headaches; and
- (c) Featured, in aforesaid advertising, trade names "Seyon Products Company, Inc." and "End-O-Corn Laboratories, Inc.," and represented thereby that such supposed concerns or sellers constituted legally existing corporate entities operating a laboratory or laboratories in which medicines in question were made and compounded by said individual, facts being that they were thus made by pharmaceutical laboratories in which he had no interest whatever, and sold by him in regular course of trade, and he neither operated nor maintained laboratory in which medicinal products were made or tested, and owned no interest in any manufacturing establishment, as aforesaid, from which such products were obtained;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said representations were true, and that said medicinal preparations possessed therapeutic values and properties represented, and into purchase thereof in and on account of such beliefs induced and brought about by reason of his said claims and representations, and with result that trade was diverted unfairly to him from competitors engaged in sale of similar preparations or those designed for usage in treatment of same or similar diseases and conditions, and who do not in any way misrepresent their business status as manufacturers or therapeutic values or properties of their respective products:

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