

Syllabus

IN THE MATTER OF
DARLING & COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3766. Complaint, Dec. 14, 1939¹—Decision, Mar. 19, 1940*

Where a corporation which was engaged for more than ten years, directly and through subsidiaries, in purchase of raw materials consisting chiefly of shop fats, bones, suet, and calfskins and hides, and in processing such raw materials and selling and offering for sale finished products therefrom to purchasers in other States, and which, operating chiefly in the eastern and midwestern portions of the United States, was in substantial competition with others similarly engaged in purchase of raw materials in commerce among the various States and in sale of processed calfskins, hides, fertilizer, and products manufactured or rendered from fats, bones, and suet, in commerce as aforesaid, and, by reason of its financial strength, was predominating organization in business in question in territory in which it and its subsidiaries operated; with intent to injure and eliminate competition in purchase of unprocessed hides, calfskins, fats, bones, and suet in said territories—

- (a) Paid, in localities in which it met competition in purchase of raw materials, prices higher than justified by trade conditions, and quoted, in such localities, without intending to pay, prices higher than justified, as aforesaid set forth;
- (b) Enticed, through higher wages and otherwise, drivers covering routes of sources of supply of raw materials of competitors to leave employ of latter and enter into its own employ, with intent of obtaining for itself supply previously obtained by drivers aforesaid for such competitors;
- (c) Held out as independent certain of its subsidiaries; and
- (d) Solicited making of, and did make, loans to butchers in various cities upon agreement that all fats, bones, suet, and other offal from said butchers' shops should be sold exclusively to respondent by such butchers, by whom, pursuant to agreements aforesaid, sales were thereafter refused to its competitors;

With result that said acts and practices actually injured, hindered, and prevented competition in purchase of unprocessed hides, calfskins, fats, bones, and suet in commerce, and had dangerous tendency so to do and to create in it, in territories in question, monopoly in purchase of products aforesaid, and with result of unreasonably restraining commerce in question therein:

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

¹ Amended.

Complaint

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Before *Mr. John L. Horner*, trial examiner.

Mr. Floyd O. Collins and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Harold S. Walters and *Mr. John M. Lee*, of Chicago, Ill., *Thompson, Hine & Flory*, of Cleveland, Ohio and *Hayes & Hayes*, of Washington, D. C., for respondent.

AMENDED 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 *Darling & Co.*, hereinafter referred to as respondent, has violated the provisions of the 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in Chicago in said State. It is now and for more than 10 years last past has been engaged directly and through subsidiary corporations in the purchase of raw materials consisting chiefly of shop fat, bones and suet, calf skins, and hides, in commerce between and among various States of the United States and in the District of Columbia and in the sale of processed hides and calf skins, fertilizer, and other products rendered from raw materials, in commerce between and among the various states of the United States and in the District of Columbia. Respondent's places of business are chiefly in the Eastern and Mid-western portions of the United States although it sells directly and through subsidiaries generally throughout the United States.

PAR. 2. In the course and conduct of its business said respondent has caused and still causes such raw materials, when purchased by it, to be transported to its various places of business and to the places of business of its subsidiary corporations from the places of purchase in various States of the United States other than the States in which the manufacturing plants of respondent and of its subsidiaries are located, and in the course and conduct of its business said respondent has caused and still causes such processed hides and skins, fertilizer, and products rendered from fat, bones and suet, when sold by it, to be transported from its place of business in Chicago and from the places of business of its various subsidiary corporations, into and through various States of the United States other than the state in which the respondent and its subsidiary corporations have their places of business, to the purchasers in such other States and in the District

of Columbia to whom such processed hides and skins, fertilizer, and products rendered from fat, bones, and suet, are sold. Respondent, in the territory in which it manufactures directly and through subsidiaries the products sold by it, is the largest single organization in the industry in which it is engaged, and by reason also of its financial strength is the predominating corporation in such business. In the course and conduct of its business respondent is now and for more than 10 years last past has been in substantial competition with other corporations and with firms, persons, and partnerships engaged in the purchase of raw materials in commerce between and among the various States of the United States and in the District of Columbia, and in the sale of processed hides and calf skins, fertilizer, and products rendered from fat, bones and suet, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For the purpose and with the intent to eliminate competition in the purchase of unprocessed hides, calf skins, fat, bones, and suet for the purpose and with the intent to restrain and control the supply of processed hides and calf skins, fertilizer, and products rendered from fat, bones, and suet entering into and moving in commerce between and among the various States of the United States and in the District of Columbia, and to control the price of processed hides and calf skins, fertilizer, and products rendered from fat, bones, and suet, and for the purpose of injuring and eliminating competition in such commerce the respondent, since 1930, directly and through its subsidiaries has done and is still doing, among other things, the following:

1. It is paying and has paid, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions and so high as to be prohibitive to its competitors.

2. It is quoting and has quoted, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions and so high as to be prohibitive to its competitors, without intending to pay such prices, but by the quoting thereof making it difficult, if not impossible, for its competitors to buy at prices lower than the prices so quoted.

3. It has enticed and still is enticing by the payment of higher wages and by other means, drivers covering routes of sources of supply of raw materials of its competitors to leave the employ of its competitors, and to enter into the employ of the respondent for the purpose of obtaining for respondent the supply of raw materials previously obtained by such drivers for such competitors.

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4. It has held out and is still holding out certain of its subsidiary corporations as being independent of and from the respondent and refraining from notifying the trade and the public that certain of its subsidiaries are controlled and affiliated with respondent.

5. It has agreed and still agrees with certain of its large competitors upon divisions of territory for the purchase of raw materials.

6. For the purpose of forcing certain of its competitors to sell their business to respondent or to go out of business altogether, it has paid and is paying prices for raw materials not justified by trade conditions and so high as to be prohibitive to such competitors.

7. In connection with purchases and intended purchases of raw materials by certain of its competitors, it has disparaged and still disparages the financial standing, financial ability and integrity of such competitors.

8. It has solicited the making of loans by it to butchers in Detroit, Cleveland, and in other cities, upon the agreement of such butchers that they sell all of the fat, bones, suet and other offal from their shops exclusively to respondent, and pursuant to such solicitation has made loans to butchers located in Detroit, Cleveland, and in other cities on such agreements, pursuant to which butchers to whom such loans have been made have refused to sell to competitors of respondent.

PAR. 4. The acts and practices of the respondent as herein alleged are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the purchase of unprocessed hides, calf skins, fat, bones, and suet; have a dangerous tendency to create in respondent a monopoly in the purchase of hides, calf skins, fat, bones, and suet in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in unprocessed hides, calf skins, fat, bones, and suet; have a dangerous tendency to and have actually hindered and prevented competition in the sale of processed hides and calf skins, fertilizer and products rendered from fat, bones, and suet, in commerce within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to create in respondent a monopoly in processed hides and calf skins, fertilizer, and products rendered from fat, bones, and suet, in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in processed hides and calf skins, fertilizer and products rendered from fat, bones, and suet, 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 April 17, 1939, issued, and on April 18, 1939, served its complaint in this proceeding upon respondent, Darling & Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act; and the Commission, on December 14, 1939, issued, and on December 15, 1939, served, its amended complaint in this proceeding upon respondent, Darling & Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said amended complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said amended complaint except the allegations of fact set forth in subparagraphs 5 and 7 of paragraph 3 thereof, and waiving all intervening procedure and further hearing as to said facts so admitted, 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 amended complaint and substitute answer, 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, Darling & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and has its home office and principal place of business in the city of Chicago in the State of Illinois. Respondent is now, and for more than 10 years last past has been, engaged directly and through subsidiary corporations, in the purchase of raw materials consisting chiefly of shop fats, bones, suet and calfskins and hides, and in processing said raw materials and in selling and offering for sale the finished products from said raw materials. Respondent operates chiefly in the eastern and midwestern portions of the United States.

PAR. 2. In the course and conduct of its business said respondent has caused, and still causes, such raw materials, when purchased by it, to be transported to its various places of business and to the places of business of its subsidiary corporations from the places of purchase

in various States of the United States other than the States in which the manufacturing plants of respondent and of its subsidiary corporations are located; and in the course and conduct of its business the respondent has caused, and still causes such processed hides and calfskins and the finished products manufactured or rendered from said raw materials to be transported from its place of business in Chicago, Ill., and from the places of business, of its various subsidiary corporations, into and through various States of the United States other than the States in which the respondent and its various subsidiary corporations have plants and places of business, to the purchasers in such other States to whom such finished products are sold.

PAR. 3. In the course and conduct of its business the respondent is now, and for more than 10 years last past has been, in substantial competition with other corporations and with partnerships, firms, and persons engaged in the purchase of raw materials in commerce among and between the various States of the United States and in the sale of processed calfskins, hides, fertilizer and products manufactured or rendered from fats, bones, and suet in commerce among and between the various States of the United States.

PAR. 4. The respondent, by reason of its financial strength, is the predominating organization in such business in the territories in which it and its subsidiary corporations operate, and for the purpose and with the intent to injure and eliminate competition in the purchase of unprocessed hides, calfskins, fats, bones, and suet in the territories in which it and its subsidiaries operate, has done, and is now doing, among other things, the following:

1. It has paid, and is paying, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions.

2. It has quoted, and is quoting, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions without intending to pay such prices.

3. It has enticed, and is enticing, by the payment of higher wages and by other means, drivers covering routes of sources of supply of raw materials of its competitors to leave the employ of its competitors and to enter into the employ of the respondent for the purpose of obtaining for respondent the supply of raw materials previously obtained by such drivers for such competitors.

4. It has held out, and is still holding out, certain of its subsidiary corporations as being independent of and from respondent.

5. It has solicited the making of loans by it to butchers in Detroit, Mich., Cleveland, Ohio, and in other cities upon the agreement of

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such butchers that they sell all of the fats, bones, suet and other offal from their shops exclusively to respondent, and pursuant to such solicitation has made loans to butchers located in Detroit, Mich., Cleveland, Ohio, and in other cities on such agreements pursuant to which butchers to whom such loans have been made have refused to sell to competitors of respondent.

CONCLUSION

The acts and practices of the respondent as hereinabove set forth are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to and have actually injured, hindered and prevented competition in the purchase of unprocessed hides, calfskins, fats, bones, and suet in commerce as commerce is defined in the Federal Trade Commission Act; have a dangerous tendency to create in respondent in the territories in which it operates a monopoly in the purchase of hides, calfskins, fats, bones, and suet in such commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in unprocessed hides, calfskins, fats, bones, and suet 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 amended complaint of the Commission and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said amended complaint, with the exceptions of the facts alleged in subparagraphs numbered 5 and 7 of paragraph 3, and states that it waives all intervening procedure and further hearing as to said facts admitted in said substitute answer, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act as alleged in said amended complaint, except as alleged in subparagraphs numbered 5 and 7 of paragraph 3 thereof;

It is ordered, That the respondent, Darling & Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporation or otherwise, in connection with the purchase of raw materials such as unprocessed hides, calf skins, fat, bones, and suet in commerce, as commerce is defined in the Federal Trade Commission Act, with the purpose or effect of eliminating competition in the purchase of said products, do forthwith cease and desist from:

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1. Paying, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions.

2. Quoting, without intending to pay, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions.

3. Enticing, by the payment of higher wages or by any other means, drivers covering routes of sources of supply of raw materials of its competitors, to leave the employ of its competitors and to enter into the employ of the respondent.

4. Holding out any of its subsidiary corporations as being independent of and from the respondent.

5. Soliciting the making of loans by it to butchers in any locality where it purchases raw materials upon an agreement of such butchers that they sell all of the fat, bones, suet and other offals from their shops exclusively to respondent.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
WILLIAM A. FREW TRADING AS PARADISE PRODUCTS
COMPANY, ETC.

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

Docket 3603. Complaint, Sept. 23, 1938—Decision, Mar. 20, 1940

Where an individual engaged in sale and distribution, under various trade names, of candy, garden seed, watches, blankets, and various and numerous other articles of merchandise to purchasers in various other States and in the District of Columbia; in selling and distributing his products as aforesaid—

Made use of various sales plans or methods involving sale and distribution of his said merchandise by means of game of chance, gift enterprise, or lottery scheme, and distribution to general public of certain advertising literature, catalogs and sales circulars for use in such sale and distribution under various plans and methods involving same principle and including (a) assortment of number of packages or boxes of candy and various other articles of merchandise to be given as prizes to purchasers of candy under scheme by which particular recipient of particular article was determined by number concealed under tab on pull card on back cover of his catalogs or circulars as disclosed by customer's chance selection, and operator of card was compensated by cash commission or premium; and (b) assortment of number of items of merchandise for sale and distribution through circular and pull card listing items in question and prices thereof and under scheme in accordance with which number disclosed under tab or card selected by customer by chance determined article received and amount paid, and whether customer received, as set forth on card, one of articles of apparent higher value and price than that therefor designated on card aforesaid, and card's operator was compensated as above set forth; and

Supplied thereby to and placed in the hand of others means of conducting lotteries, gift enterprises, or games of chance, in sale of his merchandise in accordance with sales plans above set forth, under which prizes or other articles of merchandise received in connection with purchase of candy were determined wholly by lot or chance, and facts as to whether purchaser received article of apparent greater value and higher regular price than that designated therefor, and which of said articles purchaser received and amount which he was required to pay were likewise thus determined, and involving in sale of merchandise to purchasing public, as above set forth, game of chance, gift enterprise, or lottery scheme, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use such or any methods involving game of chance, gift enterprise, or lottery scheme, or sale of a chance to win something by chance or any other methods contrary to public policy and refrain therefrom;

With the result that many persons were attracted by his said methods and by element of chance involved in sale of such merchandise as above described and were thereby induced to buy or sell his products in preference to merchandise offered and sold by said competitors who do not use such or