

IN THE MATTER OF
AMERICAN LECITHIN COMPANY, 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 4173. Complaint, July 5, 1940—Decision, May 7, 1941

Where four domestic and two foreign corporations, and various officers and directors thereof, interested in the production, sale, and distribution of lecithin and lecithin products, in the United States;

Acting on the initiative assumed by the president of one of said domestic corporations, manufacturer of soybean oil and desirous of developing and exploiting uses for the lecithin byproduct resulting from such manufacture, and confronted with a situation in which competitive and diffused control of essential patents and patent rights in this country and abroad imposed obstacles to its proceeding under certain patented foreign processes relative to extracting lecithin from soybean oil—

- (a) Entered into and carried out an agreement directed to the formation of a new corporation in which were merged their various theretofore competitive and conflicting interests with respect to employment of patents and patent rights in production and sale of lecithin and lecithin products in the United States and possessions and Canada, and under which, in consideration of various agreements, obligations, payments, etc., they
1. Undertook, as respects American interests involved, to refrain from exporting the products concerned;
 2. Undertook, as respects German and Danish corporations concerned, to refrain from importing such product;
 3. Undertook to assign to said new corporation all their rights and interest in the secrets concerning apparatus, devices, and processes, and letters patent and patent applications for the United States and Canada relating to the manufacture, use, and sale of lecithin and its products, and to acknowledge validity of such patents, and not to contest those thereafter acquired or developed by said new corporation;
 4. Made said new corporation exclusive distributor of the lecithin to be produced by aforesaid American manufacturer and by a second domestic corporate manufacturer, with which former shared exclusive domestic manufacturing rights under various patents thereby pooled and controlled; and
 5. Made a fourth domestic corporation, theretofore engaged in the sale of products involved under certain patents or patent rights, exclusive agent of said new corporate exclusive distributor;

With result that through said agreement and concert of action they eliminated potential competition between aforesaid domestic manufacturers and foreign concerns for business in lecithin in the United States and Canada and in foreign countries, restrained each other from contesting patents governing the production, processing, or use of lecithin, and monopolized trade and commerce therein and in products thereof in themselves; and

Where said new exclusive distributing corporation, to promote the ends which aforesaid arrangement was designed to reach—

- (b) Threatened prospective purchasers of lecithin over a period of time with suits for patent infringement should they use lecithin purchased from a competitor to practice its patented invention without obtaining a license from it when, in truth and in fact, it did not intend to follow up such threats by suit in all instances;
- (c) Attempted to extend its monopoly under its Working patent, relating to chocolate and the method of making same and other patents owned by it, to promote sale of its own unpatented lecithin for use in processes, and in making products, covered by aforesaid patents;
- (d) Attempted to, and did, mislead purchasers and prospective purchasers of lecithin into the mistaken belief that the United States Government had promulgated rules and regulations governing the labeling of products containing lecithin and lecithin compounds through representing to prospective purchasers by correspondence and through its agent the requirements for labeling prescribed by the United States Department of Agriculture and Food and Drug Administration, as it understood them, on the basis of an official letter and an article; advising them that its purified cocoa butter lecithin would not require declaration of the cocoa butter used as the carrier on the label of the packaged product, whereas soybean oil lecithin would require declaration of soybean oil content; with intent and effect of inducing prospective purchasers to buy its purified cocoa butter lecithin and refrain from purchasing the ordinary soy lecithin from either it or its competitors;
- (e) Disparaged competitor's products through asserting to prospective purchasers that certain of them contained substances such as aluminum cleate, mineral oil, 140°-melting-point stearine, soybean meal, excess water, and excess fatty acids, to the extent and degree disclosed by chemical analyses, without explanation, in many cases, except when requested, of the significance of such ingredients, thus taking unfair advantage of competitors by unfairly representing and describing their products;
- (f) With intent of creating the erroneous belief in the minds of purchasers that use of its product "Lexin" was recommended by the Government under the Food, Drug and Cosmetic Act of 1939, published and disseminated a scientific treatise entitled "Viscosity of Chocolate" in which the statement was made that "the use of a refined and purified lecithin in the carrier of pure cocoa butter (Lexin) is recommended under the new Act," facts being that the act in question did not recommend the use of any particular product; and

Where said two domestic manufacturers—

- (g) Followed the practice of selling exclusively to aforesaid exclusive distributing corporation and refrained from entering into competition with one another in the sale of lecithin produced by them under patented processes owned by it; and

Where said exclusive distributor, excepting recently and with the consent of said foreign corporations, following the outbreak of war abroad—

- (h) Refrained from exporting lecithin to territories where said German and Danish concerns were engaged in sale thereof, and prevented and restricted importation into the United States of lecithin produced by said concerns in foreign countries under process patent owned by it; and

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- (i) Acquired, subsequent to agreement hereinbefore described, various unexpired United States patents relative to production and use of lecithin, and instituted and prosecuted suits against alleged infringements, both direct and contributory, of its aforesaid Working patent:

Held, That said acts and practices were all to the prejudice of the public, had a dangerous tendency to, and actually did, hinder and prevent competition between and among themselves in sale of lecithin and lecithin products in commerce, placed in themselves power to control and enhance prices, and handicapped competitors engaged in production and sale of lecithin in the United States, in the conduct of their respective businesses; and further tended to and did: (1) vest in them control over sale and distribution of products involved, including terms and conditions thereof in interstate trade and commerce; (2) diminish and eliminate importation of lecithin from abroad, and exportation of lecithin and products thereof from the United States; (3) create false and mistaken beliefs and understandings regarding nature and use of competitor's products, the functions of the Government with regard to the labeling of food products and its rules and regulations concerning the labeling of lecithin and products containing same, and unduly restrained trade and competition in interstate commerce in said products, and constituted unfair methods of competition in commerce.

Mr. Lynn C. Paulson for the Commission.

Strange, Myers, Hinds & Wight, of New York City, for respondents, with the exception of *Hansa-Muehle* and *Aarhus Oliefabrik* which were represented by *Shaffer & Pierson*, of New York City.

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 the American Lecithin Co., Inc., a corporation, its officers, Joseph Eichberg, president, Armand May, vice president, Whitney D. Eastman, vice president, Clifton M. Kolb, secretary, Richard H. Horsburg, treasurer, its directors, Adrien Joyce, chairman; Ross & Rowe, Inc.; The Glidden Co., a corporation; Archer-Daniels-Midland Co., a corporation, its president, Shreve Archer; Hansa-Muehle, a German corporation; Aarhus Oliefabrik, a Danish corporation; and American Lecithin Corporation, a corporation, all hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as commerce is defined in 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 American Lecithin Co., Inc. (hereinafter referred to as American Lecithin Co., Inc.) is an Ohio cor-

poration with a principal office and place of business at the Durkee Building, Elmhurst, Long Island, N. Y.

Said American Lecithin Co., Inc. was organized pursuant to an agreement entered into by and between respondents Hansa-Muehle, Aarhus Oliefabrik, American Lecithin Corporation, Archer-Daniels-Midland Co., The Glidden Co. and Ross & Rowe, Inc. (hereinafter in subsequent paragraphs of this complaint referred to as Hansa-Muehle, Aarhus Oliefabrik, American Lecithin Corporation, Archer-Daniels-Midland Co., The Glidden Co. and Ross & Rowe, Inc., respectively). This said agreement (hereinafter more fully described) was entered into on December 5, 1934.

Prior to and until the time when this said agreement was entered into the American Lecithin Corporation was distributing lecithin in the United States manufactured by Hansa-Muehle in Germany; Ross & Rowe, Inc. was distributing lecithin in the United States produced in Denmark by Aarhus Oliefabrik; Archer-Daniels-Midland Co. and The Glidden Co. were producing lecithin at their respective plants in the United States and were the only producers of lecithin in the United States; each party to the agreement owned or controlled one or more patents regarding the production and use of the product lecithin; and each party was directly or indirectly in competition with each other party and with other individuals, firms, corporations, and partnerships importing into and distributing lecithin in the United States.

Pursuant to the aforesaid agreement: American Lecithin Co., Inc. was organized with a nominal common capital consisting of 1,000 shares without par value, which said shares were allocated to the aforesaid organizers on an agreed basis; each of the organizers assigned to the said American Lecithin Co., Inc., upon its incorporation, all their right, title, and interest in and to their secret knowledge, concerning apparatus, devices and processes, also all their right, title and interest in and to letters patent and patent application for the United States and possessions and the Dominion of Canada, which relate to the manufacture, use, and sale of lecithin and lecithin products which they owned at the time the agreement was entered into, or which they thereafter might develop or acquire; each of the organizers have received benefits in a manner stipulated to and agreed upon, and have participated in the management of the said corporation through representation on its board of directors, which said board consists of six members—two appointed by The Glidden Co., two by Archer-Daniels-Midland Co., one by Hansa-Muehle and Aarhus Oliefabrik, and one by American Lecithin Corporation.

Respondents Joseph Eichberg, Armand May, Whitney D. Eastman, Clifton M. Kolb, Richard H. Horsburg, and Adrien Joyce, individuals, are president, vice president, vice president, secretary, treasurer and chairman of the board of directors, respectively, of American Lecithin Co., Inc., and have their principal offices and place of business at the Durkee Building, Elmhurst, Long Island, N. Y.

Respondent Ross & Rowe, Inc. is a New York corporation with its principal office and place of business at 75 Varick Street, New York, N. Y.

The Glidden Co. is an Ohio corporation with its principal office and place of business at 1396 Union Commerce Building, Cleveland, Ohio.

Archer-Daniels-Midland Co. is a Delaware corporation with a principal office in the Roanoke Building, Minneapolis, Minn.

Respondent Shreve Archer, an individual, is president of Archer-Daniels-Midland Co. and has his principal office and place of business at the offices of the Archer-Daniels-Midland Co. in the Roanoke Building, Minneapolis, Minn.

Hansa-Muehle is a corporation duly organized and existing under the laws of Germany and having a place of business at Hamburg, Germany.

Aarhus Oliefabrik is a corporation duly organized and existing under the laws of Denmark and having a place of business at Aarhus, Denmark.

American Lecithin Corporation is a Delaware corporation, having its principal office and place of business at Atlanta, Ga.

PAR. 2. Lecithin is a chemical product used in the manufacture and making of candy, paints, petroleum products, shortening, margarine, rubber, leather, oils, fats, waxes, biscuits, crackers, and other commodities. It is a natural, organic substance occurring in small amounts in practically all living cells and in considerable quantities in egg yolks and in the seeds of most plants. It is not a patented commodity, but there are several patents outstanding on its utilization and on the methods of combining it with other materials. One of the more common functions which lecithin performs is that of preventing graying in products in the manufacture of which cocoa or chocolate is used. It also advantageously affects fluidity.

PAR. 3. In the course and conduct of their respective businesses respondents produce, buy, sell, ship, and distribute, or cause to be produced, bought, sold, shipped, and distributed, substantial quantities of lecithin in commerce among and between the States of the United States, the Territories thereof, and the District of Columbia, as fol-

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lows: American Lecithin Co., Inc., buys quantities of lecithin produced by Archer-Daniels-Midland Co. and The Glidden Co. at their respective places of business, and causes same to be shipped to it at its principal place of business, which it in turn sells and distributes to purchasers located in the several States of the United States or resells in quantities to Ross & Rowe, Inc. Ross & Rowe, Inc., purchases substantial quantities of lecithin from the American Lecithin Co., Inc., for resale and distribution to purchasers located in the several States of the United States and in the District of Columbia. Each of the other respondents named in this complaint and not specifically referred to in this paragraph 3, participate in the operation and management of the said American Lecithin Co., Inc., and in the management of their respective firms, corporations, partnerships, and proprietorships as described in the preceding paragraphs hereof.

Ross & Rowe, Inc., sells and distributes lecithin under the trade name of "Yelkin." American Lecithin Co., Inc., sells and distributes lecithin under the trade name of "Lexin."

In the aforesaid manner each and all of the respondents named herein are and have for more than 4 years last past, and at all times mentioned herein, engaged in commerce in lecithin in, between, and among the several States of the United States, the Territories thereof, and the District of Columbia.

PAR. 4. On or about December 5, 1934, respondents entered into an agreement, understanding, combination, and conspiracy to monopolize trade and commerce in lecithin in, among, and between the several States of the United States, the Territories thereof and the District of Columbia, and to suppress, lessen, restrain, and eliminate competition in the purchase, sale, and distribution of the said product lecithin in said commerce.

Pursuant to this agreement, understanding, combination, and conspiracy, and in furtherance thereof, Hansa-Muehle, American Lecithin Corporation, Aarhus Oliefabrik, Archer-Daniels-Midland Co., The Glidden Co., and Ross & Rowe, Inc., as alleged in paragraph 1 hereof, entered into an agreement on December 5, 1934, providing for the formation of the American Lecithin Company, Inc. In addition, it was provided in this said agreement, amongst other things, that:

(a) The American Lecithin Co., Inc., should grant to Archer-Daniels-Midland Co. and The Glidden Co. an exclusive license covering the manufacture of lecithin and lecithin products and that lecithin and lecithin products should be sold exclusively to the said American Lecithin Co., Inc., by the said Archer-Daniels-Midland Co. and The Glidden Co.

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(b) Ross & Rowe, Inc., should act as selling agent of the said American Lecithin Co., Inc., on condition that Ross & Rowe, Inc., would not handle any lecithin competitive with that sold by the said American Lecithin Co.

(c) Hansa-Muehle, Aarhus Oliefabrik, American Lecithin Corporation, Archer-Daniels-Midland Co., The Glidden Co., and Ross & Rowe, Inc., should acknowledge all of the patents assigned to the said American Lecithin Co. as good and valid patents and should agree that they would not directly or indirectly contest the validity of the same or the validity of any patents which might be developed or acquired by the said American Lecithin Co. in the future.

(d) All the parties to the agreement should cancel and terminate all agreements or arrangements then existing which would in any way interfere with the carrying out of the principles and plan outlined in the agreement, and Hansa-Muehle and Aarhus Oliefabrik should specifically agree not to sell lecithin, or products made with the same, in the United States and the Dominion of Canada, with the exception of Newfoundland, during the life of the patents covered by the said agreement, and American Lecithin Co., Inc., The Glidden Co., Archer-Daniels-Midland Co., and Ross & Rowe were likewise to agree not to sell such products outside of the United States, its possessions, and Canada.

PAR. 5. Pursuant to the agreement, understanding, combination, conspiracy, and the agreement entered into in pursuance thereof as alleged in paragraph 4 hereof and in furtherance of their purposes and aims as alleged in paragraph 4 hereof, respondents have, during all times since 1935, done and performed many acts and things and engaged in many practices and methods and they are continuing to do and perform many acts and things and engage in many practices and methods as follows:

(a) Hansa-Muehle and Aarhus Oliefabrik have refrained from exporting lecithin to the United States, and have attempted to discourage, impede, restrict, and hinder the importation of lecithin into the United States from other producers thereof located in countries of Europe.

(b) The American Lecithin Co., Inc., has refrained from exporting lecithin from the United States, and has refrained from purchasing lecithin from any other sources than Archer-Daniels-Midland Co. and The Glidden Co.

(c) The American Lecithin Co., Inc., and the parties to the agreement aforesaid have, by means of letters, circulars, pamphlets, and advertisements in trade papers and otherwise, published, dissemi-

nated, and circulated and caused to be disseminated through the United States mails and brought to the attention of purchasers and prospective purchasers of the product lecithin, false and misleading statements and representations concerning lecithin manufactured, sold, and distributed by competitors, concerning "Yelkin" and "Lexin" (brands of lecithin distributed by John E. Rowe, Laura W. Rowe, and Wm. F. Schlesinger and the American Lecithin Co., Inc., respectively) and concerning lecithin generally and patents pertaining to it and its use; and by the aforesaid means and by other like and similar methods have unfairly sought and attempted to disparage competitors' lecithin products and obtain a monopoly for themselves in the sale and distribution of lecithin in commerce in the United States, the territories thereof, and the District of Columbia.

(d) Respondents have pooled interests (patents, secrets, patent applications, etc.), shared earnings and allocated profits, granted and accepted reciprocal benefits, established and maintained exclusive dealing contracts, agreed upon a division of sales rights, and have cooperated in the doing and performing of other acts and things for the purpose and with the effect of controlling the production of lecithin in interstate commerce in the United States.

(e) Respondents have sought and attempted, and do seek and attempt, by personal contact and communication with purchasers and users, or prospective purchasers and prospective users of lecithin and by other means, to convey the impression and create the belief that lecithin produced and distributed by their competitors is not approved by the Food and Drug Administration of the United States Department of Agriculture, and have threatened to cite said purchasers and prospective purchasers for investigation to the Food and Drug Administration for failure to properly advertise and label their products when, in truth and in fact, the threats and accusations could or cannot be sustained and were and are not warranted by the facts in many instances; and by the aforesaid and similar means have sought and attempted, and do seek and attempt, to discourage sales and purchases of competitors' lecithin.

PAR. 6. Among and typical of the representations made and being made as referred to in paragraph 5 (c) and (e) hereof is a printed statement circularized by the said American Lecithin Co., Inc., entitled "Viscosity in Chocolate," in which the following claim in respect to "Lexin" is made:

In this connection we might mention that the new Food, Drug and Cosmetic Act of 1938 requires the legend "artificial flavor" when any synthetic flavor is

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used in chocolate. By synthetic flavor (or color) the law means any flavor (or color) made by chemical synthesis or other artifice.

The use of a refined and purified lecithin in the carrier of pure cocoa-butter (LEXIN) is recommended under the new Act. If lecithin in a carrier of soya oil is used, both the soya oil as well as the lecithin have to be listed on the label.

By this claim respondents have sought, and seek, to create the belief that "Lexin" has the endorsement of the Food and Drug Administration of the United States Department of Agriculture. In truth and in fact, the said Food and Drug Administration has not endorsed the product "Lexin" and respondents' claim is false and deceptive.

PAR. 7. Said agreement, understanding, combination, and conspiracy, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had, and do have, the capacity and tendency and effect (a) of unduly and unlawfully restricting and restraining competition in the sale and use of lecithin in commerce between, among, and in the several States of the United States and in the District of Columbia, and with foreign nations and outlying territories of the United States, and of thereby restricting and restraining the use thereof in the manufacture, production, and making of numerous and sundry articles, products, and commodities comprising a substantial body of the aforesaid trade in interstate commerce; (b) of preventing the growth and development of new uses and additional outlets for the product lecithin and for products in the manufacture of which the use of lecithin is necessary or helpful; (c) of restraining competition among domestic manufacturers of lecithin and between domestic manufacturers of lecithin and distributors of imported lecithin; (d) of prejudicing respondents' competitors in the conduct and pursuit of their respective businesses; (e) of creating false and erroneous beliefs in the minds of purchasers and users, prospective purchasers, and users of lecithin; (f) of substantially enhancing prices for lecithin to the consuming public; (g) and of eliminating competition, with the capacity and tendency to create a monopoly in the hands of respondents in the production, sale, and distribution of lecithin in commerce within the United States, the territories thereof, and the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 5th day of July 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 17, 1940, respondents American Lecithin Co., Inc., Joseph Eichberg, Armand May, Whitney D. Eastman, Clifton M. Kolb, Richard H. Horsburg, Adrien Joyce, Ross & Rowe, Inc., The Glidden Co., Archer-Daniels-Midland Co., Shreve Archer, and American Lecithin Corporation filed a joint answer in this proceeding by their attorney, Roger Hinds, and on October 31, 1940, filed an amendment to their said answer by their attorney, Roger Hinds. On September 14, 1940, respondents Hansa-Muehle and Aarhus Oliefabrik filed a joint answer in this proceeding by their attorney, Howard O. Pierson. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents American Lecithin Co., Inc., Joseph Eichberg, Armand May, Whitney D. Eastman, Clifton M. Kolb, Richard H. Horsburg, Adrien Joyce, Ross & Rowe, Inc., The Glidden Co., Archer-Daniels-Midland Co., Shreve Archer, and American Lecithin Corporation, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding, as to the aforesaid respondents, and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding as to them without the presentation of further testimony, argument, filing of briefs, or other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Lecithin Co., Inc. (so named in the complaint), is the American Lecithin Co. ("Inc." not being part

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of its corporate name), an Ohio corporation with its principal office and place of business in the Durkee Building, Elmhurst, Long Island, N. Y.

Respondent Joseph Eichberg is president of respondent American Lecithin Co.

Respondent Armand May is vice president of respondent American Lecithin Co.

Respondent Whitney D. Eastman (so named in the complaint) is Whitney H. Eastman, a vice president of respondent American Lecithin Co.

Respondent Clifton M. Kolb is secretary of respondent American Lecithin Co.

Respondent Richard H. Hoosburg (so named in the complaint) is Richard H. Horsburgh, treasurer of respondent American Lecithin Co.

Respondent American Lecithin Co. has a board of directors consisting of six members as follows: Respondent Adrien D. Joyce (so named in the complaint) is Adrian D. Joyce, chairman of the board of directors; Armand May, Whitney H. Eastman, Richard H. Horsburgh, W. H. Morris, and Harold H. Fries are the other five directors.

Respondent Ross and Rowe, Inc., is a New York corporation with its principal office and place of business at 75 Varick Street, New York, N. Y.

Respondent The Glidden Co. is an Ohio corporation with its principal office and place of business at 1396 Union Commerce Building, Cleveland, Ohio.

Respondent Archer-Daniels-Midland Co. is a Delaware corporation with its principal office in the Roanoke Building, Minneapolis, Minn.

Respondent Shreve Archer, an individual, is president of respondent Archer-Daniels-Midland Co.

Respondent Hansa-Muehle is a corporation duly organized and existing under the laws of Germany and having a place of business at Hamburg, Germany.

Respondent Aarhus Oliefabrik is a corporation duly organized and existing under the laws of Denmark and having a place of business at Aarhus, Denmark.

Respondent American Lecithin Corporation was organized as a Delaware corporation having its principal office and place of business at Atlanta, Ga.

For convenience, hereinafter the aforesaid respondents will be referred to by their names without the designation "respondent" and at all times hereinafter when any one of the aforesaid names appears it is the respondent of that name to whom reference is made.

PAR. 2. Lecithin, the chemical compound, is a natural organic substance of complex composition occurring in practically all living cells and in relatively larger proportions in egg yolks and in the seeds of certain plants. The lecithin of commerce, which is the product hereinafter meant when the term "lecithin" is used, is a mixture of soy lecithin and related chemical compounds (totaling about 65 percent to 70 percent) and a fatty carrier (about 30 percent to 35 percent), the most common fatty carriers being soybean oil in soy lecithin, and cocoa butter in cocoa butter lecithin. Commercial lecithin is produced in quantity as a byproduct in connection with at least two known methods of processing soybeans, namely, the expeller method and the extraction method. Both involve separation of the lecithin from mixtures of oils, fats, proteins, moisture, etc. There are a number of unexpired United States patents covering steps of process in recovering lecithin. Those owned by American Lecithin Co. are listed in numbered paragraphs 4 and 7 below. There are numerous United States patents covering inventions wherein lecithin is added to other materials either as a useful step in new procedure, or to produce a new article of manufacture. A number of such patents listed in numbered paragraphs 4 and 7 below and including the Working patent No. 1,781,672 which claims both the addition of lecithin to chocolate and the chocolate product so produced are owned by American Lecithin Co. As so used in chocolate, the most important purposes of the lecithin are to reduce the viscosity of the chocolate (thereby to facilitate coating), to retard greying of the chocolate, and to produce a finished chocolate containing a reduced quantity of cocoa butter, which is equal in appearance to a finished chocolate containing a greater amount of cocoa butter. Commercial lecithin is also used in the manufacture of candy, paints, petroleum products, shortening, margarine, rubber, leather, oils, fats, waxes, biscuits, crackers, and other commodities.

Lecithin is produced in the United States as a byproduct in the recovery and processing of soybean oil and to a minor degree from corn oil. It is sold in various grades and in different stages of refinement. In 1930 the total annual consumption of lecithin in the United States did not exceed 50,000 pounds, all of which was imported and sold by respondents and their predecessors. In 1939 the total annual consumption of lecithin in the United States was about 1,500,000 pounds, of which American Lecithin Co. sold about 66 percent. Of the remaining 34 percent about half was imported and half was produced in the United States. Imports of lecithin have dropped from 350,000 pounds in 1934 (approximately 340,000 pounds of which were imported and sold by respondents, American Lecithin Corpora-

tion and Ross & Rowe, Inc.) to about 260,000 pounds in 1939, of which latter amount none was imported or sold in the United States by any of the respondents. For a time in 1935 and 1936 American Lecithin Co. imported substantial amounts of lecithin purchased from Aarhus Oliefabrik and Hansa-Muehle incidental to destruction of the Glidden plant.

On July 2, 1940, an act of Congress went into effect entitled "An Act to Limit the Importation of Products Made, Produced, Processed or Mined Under Process Covered by Unexpired Valid United States Patents and for Other Purposes."

In or about the month of September 1939, American Lecithin Co., first with the acquiescence, and thereafter with the express consent, of Aarhus Oliefabrik and Hansa-Muehle, began to export lecithin to Europe, Asia, Africa, Australia, and North and South America and has continued to do so and is now doing so. From 1934 down to the present time the prices of lecithin in the United States have ranged downward.

PAR. 3. The American Lecithin Co. is, and has been for more than 4 years last past, engaged in interstate trade and commerce in lecithin, in that it buys lecithin produced in the plants of Archer-Daniels-Midland Co. and The Glidden Co., located in the State of Illinois, and sells at least a part of the lecithin so purchased to purchasers in that State and the other States of the United States, and ships, or causes to be shipped, the lecithin so purchased and sold to the purchasers thereof in the several States of the United States.

Respondent officers and directors of the American Lecithin Co. participate in the conduct of the affairs of the American Lecithin Co.

Ross & Rowe, Inc., is engaged in interstate commerce in that it sells lecithin for the account of American Lecithin Co. in the several States of the United States as the selling agent of American Lecithin Co.

The Glidden Co. is engaged in interstate commerce in that it manufactures lecithin in the State of Illinois and sells and ships it to the American Lecithin Co. located in the State of New York.

The Archer-Daniels-Midland Co. is engaged in interstate commerce in that it manufactures lecithin in the State of Illinois and sells and ships it to the American Lecithin Co. in the State of New York. Shreve Archer, as president of the Archer-Daniels-Midland Co., participates in the conduct of the affairs of that company.

American Lecithin Corporation has not engaged in interstate commerce since the formation of American Lecithin Co.; but prior to that time the American Lecithin Corporation sold and distributed

lecithin to purchasers thereof located in the several States of the United States and in the District of Columbia.

PAR. 4. Prior to December 5, 1934, the situation with respect to the sale and distribution of lecithin in the United States was substantially as follows:

(a) Hansa-Muehle owned United States patents for the production and use of lecithin. It was shipping lecithin to the American Lecithin Corporation, to whom it had granted exclusive selling rights in the United States and had agreed not to grant licenses to manufacture lecithin without the consent of American Lecithin Corporation.

(b) The American Lecithin Corporation sold and distributed lecithin under an arrangement with Hansa-Muehle. It owned several United States patents relative to the use of lecithin, including one known as the Working patent, No. 1,781,672 issued November 11, 1930, which concerned the use of lecithin in the manufacture of chocolate and chocolate products.

(c) Aarhus Oliefabrik produced lecithin in Europe and exported it to the United States to be sold by its agents Fries Bros., whose subagent was Ross & Rowe, Inc., a corporation, Ross & Rowe, Inc., sold lecithin obtained from Aarhus Oliefabrik in competition with the American Lecithin Corporation and other persons, partnerships, and corporations in the United States. They owned a United States patent No. 1,859,240, issued May 17, 1932, on the use of lecithin in connection with the manufacture of candy. In 1932, Ross & Rowe, Inc., granted to American Lecithin Corporation sales rights under said patent, and American Lecithin Corporation granted to Ross & Rowe, Inc., sales rights under said Working chocolate patent conditioned upon the payment of royalties.

(d) Other European producers of lecithin sold and shipped lecithin in the United States through brokerage or commission merchants in competition with Ross & Rowe, Inc., and the American Lecithin Corporation. One American firm selling lecithin of foreign manufacture is the J. C. Ferguson Manufacturing Co. of Providence, R. I., which began selling in 1935.

(e) The Archer-Daniels-Midland Co. obtained information relative to a manufacturing process in use in Europe from a competitor of Hansa-Muehle, one Brinkman and Mergell of Hamburg, Germany, and began producing lecithin in Chicago in 1934 in small quantities on an exploratory basis. They made an arrangement with Ross & Rowe, Inc., in June of 1934, covering the sale of lecithin domestically. Archer-Daniels-Midland Co. had developed a process subordinate to processes patented by Hansa-Muehle before the agreement of December

5, 1934, hereinafter described and covering the use of hexane in the separation of the phosphatide from soybean oil. The application was filed December 4, 1934, and United States patent No. 2,024,398 issued December 17, 1935.

(f) The Glidden Co. is a large manufacturer of paints, varnishes, lacquers, and food products and is also engaged in the business of producing and refining large quantities of vegetable oils. In December of 1934 The Glidden Co. commenced operations in a plant which it had constructed at Chicago, Ill., for the extraction of soybean oil from soybeans by the solvent method through the use of equipment purchased in Germany. Knowing that the soybean oil contained lecithin and that some of the lecithin would have to be removed from the soybean oil to make such oil conform to the specifications under which the oil was to be sold, it occurred to The Glidden Co. that new and substantial commercial uses might be found for lecithin and thereby increase the value of soybean products produced in the United States to the benefit of growers and processors of soybeans. In early 1934, The Glidden Co. consulted Brinkman and Mergell, a German concern, thoroughly experienced in the extraction of soybean oil from soybeans by the solvent method and in the recovery of lecithin from soybean oil, and secured detailed information as to the recovery of lecithin from soybean oil. Brinkman and Mergell advised The Glidden Co. that the processes relative to extracting lecithin from soybean oil used in Germany could be used in the United States without interference from Hansa-Muehle because patent litigation in Germany covering German patents had turned out favorable to Brinkman and Mergell. Brinkman and Mergell overlooked the fact, however, that German court decisions did not apply to United States patents owned by Hansa-Muehle covering the recovery of lecithin from soybean oil, and The Glidden Co. found upon investigating said United States patents and all other United States patents relative to lecithin that it could not extract lecithin from soybean oil on a commercial and practical basis without infringing United States patents owned by Hansa-Muehle, and that the use of the lecithin as sold would be covered by other United States patents owned by American Lecithin Corporation and others.

The Glidden Co. decided to protect itself by securing licenses to manufacture and use lecithin from owners of United States patents and in August of 1934, endeavored to work out an arrangement with American Lecithin Corporation and Hansa-Muehle, but this was not consummated.

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About August of 1934, The Glidden Co. learned for the first time that Archer-Daniels-Midland Co. was experimenting with the production of lecithin as a byproduct of the processing of soybeans and contemplated the use of the processes covered by the United States patents owned by Hansa-Muehle, believing that it could do so because of erroneous information given to Archer-Daniels-Midland Co. by Brinkman and Mergell of Germany. The Glidden Co. notified Archer-Daniels-Midland Co. that it contemplated the production of lecithin under the United States patents of Hansa-Muehle on an exclusive basis and that it would protect its rights under said patents by suit, if necessary.

Archer-Daniels-Midland Co. investigated the patent situation and became convinced that its production and sale of lecithin in the United States could not be made practicable, economical, or successful unless it obtained licenses under said patents.

The Glidden Co. expressed a willingness to give up its attempts to secure an exclusive license for the United States under said patents to the extent that Archer-Daniels-Midland Co. should have the same exclusive right as The Glidden Co. to produce lecithin in the United States under said patents and arranged the meeting between all of the respondents which resulted in the execution of the agreement dated December 5, 1934. The Glidden Co. was not producing and selling lecithin at the time the agreement of December 5, 1934, was entered into. In April of 1935, The Glidden Co., completed a plant in Chicago for the refining of lecithin and has continued to refine lecithin in said plant since that date with the exception of the period when the plant was out of commission, due to an explosion which occurred in October 1935.

(g) Prior to December 5, 1934, when the memorandum between respondents hereinafter described was signed, Hansa-Muehle, American Lecithin Corporation and Ross & Rowe, Inc., one or another, owned the following unexpired United States patents relative to the production and use of lecithin:

Patent No.	Inventor	Issue date
1, 464, 557	Bollman-----	8/14/23.
1, 575, 529	Bollman-----	3/2/26.
1, 606, 052	Bollman-----	11/9/26.
1, 680, 541	Bollman-----	2/28/28.
1, 667, 767	Bollman-----	5/1/28.
1, 673, 615	Bollman-----	6/12/28.
1, 702, 077	Rewald-----	6/3/30.
1, 776, 720	Bollman-----	9/23/30.
1, 776, 721	Bollman-----	9/23/30.

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Patent No.	Inventor	Issue date
1, 779, 012	Rewald.....	10/21/30.
1, 781, 672	Working.....	11/11/30.
1, 831, 728	Working.....	11/10/31.
1, 843, 051	Thiele.....	1/26/32.
1, 859, 240	Jordan.....	5/17/32.
1, 884, 899	Bollman.....	10/25/32.
1, 892, 588	Schwieger.....	12/27/32.
1, 893, 393	Bollman & Schwieger.....	1/3/33.
1, 895, 424	Rewald.....	1/24/33.
1, 903, 397	Rewald.....	4/4/33.
1, 917, 734	Rewald.....	7/11/33.
1, 934, 005	Rewald.....	11/7/33.
1, 936, 718	Jordan.....	11/28/33.
1, 938, 864	Rewald.....	12/12/33.
1, 946, 332	Rewald.....	2/6/34.
1, 965, 490	Conway & May.....	7/3/34.
1, 977, 940	Frank.....	10/23/34.
1, 982, 186	Working.....	11/27/34.

(h) Prior to December 5, 1934, when the agreement between the respondents hereinafter described was entered into, the following unexpired United States patents covering the production and use of lecithin were owned by parties other than the respondents:

Patent No.	Inventor	Issue date
1, 277, 336	Moskovits & Jacobson.....	8/27/18.
1, 290, 971	Girard.....	1/14/19.
1, 297, 668	Ersler.....	3/18/19.
1, 313, 014	Posternak.....	8/12/19.
1, 371, 546	Bollman.....	3/15/21.
1, 411, 154	Bollman.....	3/28/22.
1, 417, 477	Bollman.....	5/23/22.
1, 553, 294	Baker.....	9/8/25.
1, 555, 517	Posternak.....	9/29/25.
1, 586, 145	Dengler.....	5/25/26.
1, 631, 887	Posternak.....	6/7/27.
1, 653, 959	Grum & Limpacher.....	12/27/27.
1, 815, 739	Reynolds & Epstein.....	7/21/31.
1, 872, 913	Dreyfus & Whitehead.....	8/23/32.
1, 917, 253	Epstein & Harris.....	7/11/33.
1, 946, 333	Rewald.....	2/6/34.
1, 953, 438	Schlack.....	4/3/34.
1, 972, 764	Engelmann.....	9/4/34.

(i) Prior to December 5, 1934, no lecithin produced in the United States had been exported.

(j) It follows from the foregoing facts, (in the light of the other facts found herein), that, in the sale and distribution of lecithin and lecithin products in trade and commerce in the United States

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and between parties in the United States and parties in foreign countries, competition existed between respondents prior to December 5, 1934; that Archer-Daniels-Midland Co. and The Glidden Co. were potential competitors of one another and of Hansa-Muehle and Aarhus Oliefabrik; that there was actual and potential competition between respondents located in the United States and respondents and others located in foreign countries; that there was competition and potential competition between respondents over the development, use and ownership of patents and patent processes relating to the production and/or use of lecithin and lecithin products; and that ownership and interest in existing patents governing the production and use of lecithin and lecithin products were divergently held.

PAR. 5. (a) In December of 1934, Adrian D. Joyce, president of The Glidden Co., arranged a meeting between all of the respondents for the purpose, among others, of forming the American Lecithin Co.; and of December 5, 1934, the following memorandum of agreement was signed by the authorized representatives of the respondents Hansa-Muehle, Aarhus Oliefabrik, Archer-Daniels-Midland Co., The Glidden Co., American Lecithin Corporation, and Ross & Rowe, Inc. (as further appears at the end of said memorandum), viz:

Memorandum of the general principles concerning a plan for the manufacture, use and sale of lecithin and lecithin products in the United States and Canada, with the exception of Newfoundland, and the disposition of all patents, secret devices and secret processes now owned or hereafter invented or acquired relative to the manufacture, use and sale of lecithin and lecithin products, resulting from a conference held on December 3 and 4, 1934, at the office of The Glidden Company, 1963 Union Trust Building, Cleveland, Ohio, at which the following corporations were represented by the persons named: Dr. von Siebert, representing Hansa-Muehle G. m. b. H. and Hanseatische Muehlenwerke Aktiengesellschaft, two affiliated corporations duly organized and existing under the laws of Germany, having a place of business at Hamburg, Germany, hereinafter referred to as "Hansa"; Mr. Chr. Ruge, representing Aarhus Oliefabrik, a corporation duly organized and existing under the laws of Denmark, and having a place of business at Aarhus, Denmark, hereinafter referred to as "Aarhus"; Mr. Joseph Eichberg and Mr. Armand May, representing American Lecithin Corporation, a Delaware corporation of Atlanta, Georgia, hereinafter referred to as "Alco"; Mr. Whitney H. Eastman and Mr. W. H. Morris, representing Archer-Daniels-Midland Company, a Delaware corporation of Minneapolis, Minnesota, hereinafter referred to as "Archer"; Mr. Adrian D. Joyce and Mr. Clifton M. Kolb, representing The Glidden Company, an Ohio corporation of Cleveland, Ohio, hereinafter referred to as "Glidden"; and Mr. J. Edward Rowe, representing Ross & Rowe, Inc., a New York corporation, of New York, New York, hereinafter referred to as "Rowe."

I. Glidden shall cause a corporation to be formed, for the purpose of owning and granting licenses under patents and using and selling lecithin or phosphatides and products containing the same under the laws of the State of Delaware,

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or such other State as Glidden and Archer may deem advisable, to be known as American Lecithin Co., hereinafter referred to as "American", with a nominal common capital consisting of 1,000 shares without par value, and sufficient paid-in capital to meet the requirements of the corporation laws of the State of incorporation, to be supplied by Glidden and Archer.

The affairs of said corporation shall be managed by a Board of Directors consisting of six members. Glidden shall elect and be represented by two of said members; Archer shall elect and be represented by two of said members; Hansa and Aarhus shall elect and be represented by one member; Alco shall elect and be represented by one member.

The stock of American shall be allocated on the following basis: 30% thereof to Glidden; 30% thereof to Archer; 15% thereof to Hansa; 15% thereof to Aarhus; and 10% thereof to Alco, for the account of Mr. Armand May and/or Mr. Joseph Elchberg.

There shall be no restriction upon the sale of the shares of stock of American between the parties mentioned herein, but if any of the parties mentioned herein shall decide to sell all or any part of their interest in the stock of American to any other person, firm or corporation not mentioned herein, they shall grant to American the option to buy said stock for a period of six days, at the then book value as shown by the books of American.

II. Hansa, Aarhus, Alco, Glidden, Archer and Rowe shall immediately assign to American upon its incorporation all their right, title and interest in and to the secrets concerning apparatus, devices and processes and Letters Patent and patent applications for the United States and possessions, and Dominion of Canada, which relate to the manufacture, use and sale of lecithin and lecithin products which they now own or may hereafter develop or require, and shall receive in consideration therefor the common stock of American above mentioned and/or such other considerations as are hereinafter mentioned. American shall grant to Hansa and Aarhus an exclusive license outside of the United States and possessions, and Canada, to use the processes and uses of lecithin and phosphatides which it develops.

III. American shall grant to Archer and Glidden an exclusive license covering the manufacture of lecithin and lecithin products, which lecithin and lecithin products shall be sold to American exclusively by Glidden and Archer in equal proportions, or on such other basis as Glidden and Archer may agree upon, at the cost thereof which shall conform to any Federal Code which may apply to the industry and shall include all items which are ordinarily included in determining manufacturing costs by public accountants.

American shall have the right to grant such sub-licenses covering the use and sale of lecithin and lecithin products as its Board of Directors may determine, and shall grant a nonexclusive license to Rowe for the sale of lecithin for use according to said patents, and for the life of such patents, and as long as Rowe conforms to the terms of said license agreement; said license not to be assigned or transferred by Rowe without the approval of American; and no license shall be granted to manufacturers other than Glidden and Archer without the approval of more than seventy-five percent of the issued Common Stock.

IV. Rowe shall act as selling agent of American under the above-mentioned license agreement, and shall sell lecithin and lecithin products at prices stipulated in said license agreement, and from time to time fixed by American, and shall receive as compensation therefor 30% of said selling prices, which shall

cover all selling expense and profit. Rowe agrees not to handle any lecithin or phosphatide products competitive with those sold by American, and not to divulge to others any information regarding the business of American. No other selling agents shall be appointed or granted a license to sell under said patents without consulting Rowe. This shall not apply to ordinary brokers and salesmen.

V. Hansa, Aarhus, Alco, Archer, Glidden and Rowe jointly and severally acknowledge all of the patents assigned to American are good and valid patents and that they will not directly or indirectly contest the validity of the same, or the validity of any patents which may be developed or acquired by American in the future.

VI. Glidden and Archer will supply such funds as are required for carrying on the operations of American as advances. Such advances shall bear interest at 6% and be returned to Glidden and Archer when the financial condition of American justifies such action. Credit shall be supplied to American by Glidden and Archer on an equal basis, covering American's requirements of lecithin and lecithin products, for a sufficient length of time for American to sell said products and collect the funds from the sale thereof.

VII. Glidden and Archer shall purchase lecithin and lecithin products from American for their own use at 70% of the ordinary price paid by outside customers for approximately corresponding grades and quantities, but the price in all cases shall be at least 25% above the cost of said lecithin and lecithin products to American.

VIII. All the parties hereto shall cancel and terminate all agreements or arrangements now existing which will in any way interfere with the carrying out of the principles and plan herein outlined, and Hansa and Aarhus specifically agree not to sell lecithin or phosphatides or products made with the same in the United States and the Dominion of Canada with the exception of Newfoundland, during the life of the patents covered by this arrangement, and American, Glidden, Archer, and Rowe likewise agree not to sell such products outside of United States, its possessions, and Canada.

IX. Glidden and Archer agree that they will pay to Hansa and Aarhus up to 8½% of the annual net profits of American for the purpose of assisting Hansa and Aarhus in paying obligations under their cartel arrangements, which Hansa and Aarhus agree to pay in full each year. Hansa and Aarhus also agree to use their best efforts to terminate said obligations under said cartel arrangements at the earliest possible date that they will cooperate with Archer and Glidden and American in determining the advisability of working out the details of such cancellation. As said obligations are reduced the said 8½% shall be reduced in the same proportion.

X. It is generally understood that Rowe will continue to purchase its supply of lecithin from Aarhus and Archer until such time as American is organized and is in a position to supply Rowe with lecithin and lecithin products. It is also generally understood that Alco will continue to secure its supply of lecithin from Hansa until such time as American is organized, at which time American will take over stocks of lecithin owned by Alco and will assume all the contracts of Alco relative to the sale of lecithin and lecithin products which are determined to be fair and reasonable. None of the parties hereto shall have the right to investigate the secret process of Aarhus without obtaining permission from Aarhus.

XI. It is generally understood that the terms of this arrangement shall apply to the fully owned subsidiaries of Glidden and Archer, and that it shall be binding upon the successors and assigns of all the parties hereto.

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XII. It is understood that Hansa has granted a license to Jungmann for the United States and Canada covering the rubber industry.

XIII. It is understood that all profits in excess of the amount required for supplying the company with a reasonable amount of capital for its operation shall be distributed in dividends at least yearly.

Dated december 5, 1934.

HANSA-MUEHLE G. m. b. H. and HANSEATISCHE MUEHLENWERKE
AKTIENGESSELLSCHAFT

By SIEBERT.

AARIUS OLIEFABRIK,

By CHR. RUGE

AMERICAN LECITHIN CORPORATION,

By A. MAY, *Chairman*.

ARCHER-DANIELS-MIDLAND
COMPANY,

By W. H. MORRIS, SR.

THE GLIDDEN COMPANY,

By CLIFTON M. KOLB.

ROSS & ROWE, INC.,

By J. EDWARD ROWE.

(b) The respondents who signed as aforesaid the foregoing memorandum together with the respondent American Lecithin Co. which was organized as contemplated therein, thereafter carried out the course of action contemplated in and by said memorandum, except as otherwise stated in this stipulation, and except that on or about the 14th day of March, 1941, the respondents American Lecithin Co., The Glidden Co., Archer-Daniels-Midland Co., and Ross & Rowe, Inc., entered into a written agreement, of which the following is a copy:

MEMORANDUM OF AGREEMENT between American Lecithin Company ("American"); The Glidden Company ("Glidden"); Archer-Daniels-Midland Company ("Archer"); Ross and Rowe, Inc. ("Rowe"); Hansa-Muehle G. m. b. H. and Hanseatische Muehlenwerke Aktiengesellschaft (two affiliated corporations collectively referred to herein as ("Hansa"); and Aarhus Oliefabrik ("Aarhus").

WHEREAS on December 5, 1934, representatives of the above parties (except American) signed a memorandum setting forth a proposed course of action, the essentials of which were (1) that a new corporation (American) should be formed; (2) that certain patent and other rights should be transferred to American in consideration of the issuance, with certain restrictions, of American stock to said parties; and (3) that Glidden, Archer, Rowe, Hansa and Aarhus should each enter into certain mutual obligations with American, which essentials of said course of action were thereupon fully consummated and executed; and

WHEREAS said memorandum contemplated, in addition to all of the foregoing, certain continuing obligations by and between the aforesaid parties (including American), some of which have been expressly waived, some of which have become academic by reason of subsequently enacted statute, some of which are believed to be legally unenforceable and have never been insisted upon, some of which were inadvertently phrased and not intended, and none of which are or have been at any time regarded as essential; and

WHEREAS American Lecithin Corporation, of Delaware, one of the parties whose representatives signed said memorandum, has gone out of business, wound up its affairs, and is no longer in existence;

Now, THEREFORE, in consideration of the mutual benefits of this present action, the aforesaid parties mutually agree as follows:

I. In so far as the course of action contemplated by said memorandum of December 5, 1934 has, as aforesaid, been fully consummated and executed by the incorporation and organization of American, and its issuance of stock to said parties with said restrictions, and by the making of a separate agreement between American and Rowe, and the making (simultaneously herewith) of revised separate agreements between American and Glidden and between American and Archer, respectively, said memorandum is hereby confirmed.

II. In all other respects said memorandum and all agreements and understandings, if any, expressed therein and contemplated thereby, are hereby cancelled, leaving no continuing obligation whatsoever binding or affecting any of the aforesaid parties with respect to any of the other of said parties.

III. This agreement shall become fully binding upon American, Glidden, Archer and Rowe, if and when it shall be duly executed in behalf of all of them, and without (in view of practical difficulties arising from the war situation) procuring the execution thereof in behalf of Hansa and Aarhus. Regardless of whether or when this agreement shall be executed in behalf of Hansa or Aarhus, or both, American, Glidden, Archer and Rowe hereby relieve Hansa and Aarhus, however, of any and all continuing contractual obligations, if any there be, arising out of their execution of said memorandum of December 5, 1934, provided, however, that the foregoing shall not be construed as a consent to the importation into the United States in violation of American's statutory rights by Hansa or Aarhus of lecithin or other products manufactured under American's said patented processes; and the rights of Hansa and Aarhus to said American stock and dividends thereon, and all the other rights lawfully exercised by stockholders, are hereby confirmed.

(c) It follows from the foregoing facts (in the light of the other facts found herein), that respondents entered into an agreement and understanding on or about December 5, 1934, and thereafter carried out said agreement and understanding, to suppress, eliminate, lessen, and restrain competition between them in the production, sale, and distribution of lecithin and lecithin products in interstate trade and commerce in the United States and in trade and commerce between the United States and foreign countries; that respondents, by agreement and concerted action, through combination, attempted to and did: eliminate potential competition between The Glidden Co. and Archer-Daniels-Midland Co. and between The Glidden Co. and Archer-Daniels-Midland Co. and Aarhus Oliefabrik and Hansa Muehle for business in lecithin in the United States and in foreign countries; restrained each other from contesting patents governing the production, processing, or use of lecithin; and monopolized trade and commerce in lecithin and lecithin products in themselves.

PAR. 6. In furtherance of the aforesaid agreement of December 5, 1934, and pursuant to the purpose and plan of the respondents

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provided for thereby, and to promote the ends which the arrangement set forth in the agreement was designed to reach, the American Lecithin Co., and the other parties respondent, have engaged in the acts and practices as hereinbelow described:

(a) The American Lecithin Co., for the purpose of making sales of lecithin, has, over a period of time, made threats to prospective purchasers of lecithin that said prospective purchasers would be sued for infringement of a patent or patents held by the American Lecithin Co. should they use lecithin purchased from a competitor to practice such patented invention without obtaining a license from American Lecithin Co., when in truth and in fact American Lecithin Co. did not intend to follow up such threat with a suit in all instances; and has attempted to promote the sale of its lecithin, a commodity not the subject matter of the Working patent No. 1,781,672 relating to chocolate and the method of making same, owned by American Lecithin Co., by using said patent for that purpose; and it has attempted to extend its monopoly under said Working patent No. 1,781,672 and other patents to promote the sale of its own unpatented commodity, lecithin, for use in processes, and in making products, covered by respondents' patents.

(b) The American Lecithin Co. has, at various times by correspondence and by personal contact, through its agents, with prospective purchasers, attempted to, and has, represented to the said prospective purchasers the facts regarding requirements for labeling prescribed by the United States Department of Agriculture and the United States Food and Drug Administration, as it understood them by calling their attention to a letter dated April 5, 1930, addressed to American Mills Co., Atlanta, Ga. (a predecessor in business of respondent, American Lecithin Corporation), on the letterhead of the United States Department of Agriculture, signed by L. D. Elliott, Acting Chief, Interstate Supervision, wherein the following was stated:

In our opinion, the designation "Purified Vegetable Fat" or "Purified Vegetable Oil" are not properly descriptive of the Soya bean lecithin product which is added to the chocolate coating. We are not advised of the exact composition of the product to be added to the coating but presume that it consists of perhaps 30 to 60 per cent of phosphatides and 40 to 70 per cent of soya bean oil. Such a mixture cannot be regarded as purified vegetable oil of fat. A wording should be chosen which will clearly show the true character of the ingredient and moreover will show that the ingredient in question is an added ingredient. If the product has the above indicated composition, a statement such as "—% soya bean lecithin and oil added" or "Soya bean lecithin and oil added" would probably be acceptable, but final comment on the wording used will necessarily await further advice from you as to the composition of the article.

And by calling their attention to an article entitled "Cacao Products Under the Federal Food and Drugs Act," appearing in "Manufacturing Confectioner," volume 11, No. 2, pages 34 to 36 (1931) wherein the author J. W. Sale, then and now of the Food and Drug Administration and in charge of chocolate, stated, under the subtitle, "Use of Lecithin," as follows:

The definitions and standards for chocolate and cocoa (promulgated under the Food and Drugs Act of 1906) in their various forms do not provide for the presence of added lecithin. If therefore this ingredient is added in any proportion, its presence and the presence of the solvent or vehicle if the latter is not a normal ingredient, should be plainly declared in the labeling. If the addition of the lecithin results in the concealment of damage or inferiority, its use would not be permissible even though its presence is declared in the labeling. An article in which a deficiency in cacao butter is concealed by the use of lecithin will be classed as adulterated under the Act (Food and Drugs Act of 1906).

And American Lecithin Co. has advised said prospective purchasers on the basis of the aforesaid letter and article, that, in the opinion of American Lecithin Co., the use of said company's purified cocoa butter lecithin (sold under the trade names "Lexin" and "Yelkin") would not require declaration in the label on the packaged product of the fatty substance (cocoa butter) used as the carrier; whereas the use of soybean oil lecithin, including as a carrier the fatty substance, soybean oil, would require the declaration of said soybean oil content on the label; that American Lecithin Co. made such representations and rendered such opinions for the purpose and with the effect of inducing prospective purchasers to purchase its purified cocoa butter lecithin and, to that extent, to refrain from purchasing the ordinary soya lecithin from either American Lecithin Co. or its competitors.

It follows from the foregoing facts, (in the light of the other facts found herein), that the American Lecithin Co., pursuant to and in furtherance of the agreement and understanding of December 5, 1934, as aforesaid, for the purpose of diverting trade in lecithin and lecithin products to itself and away from competitors, has attempted to and has misled purchasers and prospective purchasers of lecithin into the mistaken belief that the United States Government has promulgated rules and regulations governing the labeling of products containing lecithin and lecithin compounds and has required labeling which the United States Government has not promulgated or required; and has unfairly attempted to promote the sale of its lecithin in competition with competitors of lecithin and lecithin products.

(c) American Lecithin Co. has disparaged competitors' products in that it has asserted to prospective purchasers of lecithin that

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certain competitive products contained substances such as aluminum cleate, mineral oil, 140°-melting-point stearine, soybean meal, excess water, and/or excess fatty acids, to the extent and degree disclosed by chemical analyses without explanation, in many cases, except when requested, of the significance of such ingredients, and for the purpose of inducing prospective purchasers to purchase its lecithin and lecithin products instead of competitors' lecithin and lecithin products.

It follows from the foregoing facts, (in the light of the other facts found herein), that the American Lecithin Co. has attempted to and has taken unfair advantage of competitors by unfairly representing and describing competitors' lecithin and lecithin products.

(d) On or about May 22, 1939, American Lecithin Co. published a scientific treatise entitled "Viscosity of Chocolate" by Mr. Joseph Stanley, and disseminated it to purchasers and prospective purchasers of lecithin, in which the following statement appears:

In this connection, we might mention that the new Food, Drug and Cosmetic Act of 1939 requires the legend "artificial flavor" when any synthetic flavor is used in chocolate. By "synthetic flavor" (or color) the law means any flavor (or color) made by chemical synthesis or other artifice.

The use of a refined and purified lecithin in the carrier of pure cocoa butter (Lexin) is recommended under the new Act. If lecithin in a carrier of soya oil is used, both the soya oil as well as the lecithin has to be listed on the label.

The act referred to in the above article does not recommend the use of any particular product.

It follows from the foregoing facts, (in the light of the other facts found herein), that the publication and dissemination of the aforesaid treatise in the manner aforesaid was intended to create and had the capacity and tendency to create the erroneous and mistaken belief in the minds of purchasers and prospective purchasers of lecithin and lecithin products that the use of the American Lecithin Co.'s lecithin and lecithin products was recommended by the United States Government under the United States Food, Drug, and Cosmetic Act of 1939, and had the capacity and tendency to divert trade in lecithin and lecithin products to the American Lecithin Co. and away from competitors.

(e) The Glidden Co. and the Archer-Daniels-Midland Co. have followed the practice of selling exclusively to the American Lecithin Co. and have refrained from entering into competition with one another in the sale of lecithin produced by them under patented processes owned by American Lecithin Co.

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Conclusion

(f) Except as herein otherwise stated, the American Lecithin Co. has refrained from exporting lecithin to territories where Aarhus Oliefabrik and Hansa-Muehle are engaged in the sale of lecithin, and have prevented and restricted and attempted to prevent and restrict importation into the United States of lecithin produced by Hansa and Aarhus in foreign countries under process patents owned by American Lecithin Co.

PAR 7. Subsequent to December 5, 1934, American Lecithin Co. acquired the following unexpired United States patents relative to the production and use of lecithin:

Patent No.	Inventor	Issue date
1,986,300	Rewald-----	1/1/35.
2,019,494	Jordan-----	11/5/35.
2,029,406	Bolen-----	11/12/35.
2,020,517	Rewald-----	11/12/35.
2,020,662	Schwieger-----	11/12/35.
2,024,398	Sorenson & Beal-----	12/17/35.
2,039,739	Rewald-----	5/5/36.
2,057,695	Schwieger-----	8/10/36.
2,115,088	Schwieger-----	4/26/38.
2,181,129	Heberer-----	11/28/39.
2,194,842	Wiesehahn-----	5/26/40.

Since December 5, 1934, 77 or more individuals and corporations have secured United States patents covering the production and use of lecithin.

PAR. 8. The American Lecithin Co. has instituted and prosecuted suits against alleged infringers, both direct and contributory, of its Working patent No. 1,781,672.

CONCLUSION

Respondents have combined, conspired, agreed, and cooperated to restrain, hinder, suppress, lessen, and eliminate competition between them in interstate trade and commerce in lecithin and lecithin products in the United States and between the United States and foreign countries and to that end have engaged in many acts and practices as herein found.

The acts and practices of respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents in the sale of lecithin and lecithin products 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 handicapped competitors engaged in the production and sale of lecithin

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in the United States in the conduct of their respective businesses; have tended to and have vested in respondents control over the sale and distribution of lecithin and lecithin products, including the terms and conditions thereof, in interstate trade and commerce in the United States; have tended to and have diminished, lessened, and eliminated importation of lecithin from foreign countries to the United States and the exportation of lecithin and lecithin products from the United States to foreign countries; have tended to and have created false and mistaken beliefs and understandings regarding the nature and usefulness of competitors' products; have tended to and have created false and mistaken interpretations and understandings in the minds of purchasers and prospective purchasers of lecithin of the functions of the United States Government with regard to labeling of food products and of the rules and regulations promulgated by the United States Government concerning the labeling of lecithin and products containing lecithin; have unduly restrained trade and competition in interstate commerce in lecithin and lecithin products 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 answers of the respondents, and a stipulation as to the facts entered into between the respondents herein—except Hansa-Muehle and Aarhus Oliefabrik—with W. T. Kelley, chief counsel of the Federal Trade Commission, approved by the Commission, which provides, among other things, that, without the presentation of further testimony, arguments, filing of briefs, or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding; 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 the respondents, American Lecithin Co., Joseph Eichberg, Armand May, Whitney H. Eastman, Clifton M. Kolb, Richard H. Horsburgh, Adrian D. Joyce, Ross & Rowe, Inc., The Glidden Co., Archer-Daniels-Midland Co., Shreve Archer, and American Lecithin Corporation, their officers, directors, representatives, agents, and employees, directly or indirectly, or through any corporate or other device, shall forthwith cease and desist from engag-

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ing in or doing, in commerce, as "commerce" is defined in the Federal Trade Commission Act, either in combination or individually, the following acts or practices.

(a) Using unlawfully any patent or patents which may be held by them or any of them concerning the use, production, or processing of lecithin to divert trade in lecithin to themselves or away from competitors.

(b) Threatening to sue purchasers or prospective purchasers of competitors' lecithin for infringement of patents held by the American Lecithin Co., or any of them, but not in good faith, to enforce any patent rights which they may have, for the purpose of compelling or inducing such purchasers or prospective purchasers not to purchase lecithin from competitors.

(c) Threatening to sue agents, jobbers, or sellers or other distributors of competitors' lecithin for contributory infringement of any patents held by the American Lecithin Co., or any of them, not in good faith, to enforce any patent rights which they may have.

(d) Representing that lecithin sold by the American Lecithin Co., or by Ross & Rowe, Inc., or by any of the other respondents, is recommended for use by the Food and Drug Division of the United States Department of Agriculture, or any other branch of the Federal or State Governments, if in truth and in fact such is not the case.

(e) Disparaging competitors' products by creating or attempting to create in the minds of purchasers or prospective purchasers of lecithin the belief or understanding that lecithin produced, sold, or distributed by competitors contains deleterious or foreign matter, requires labeling not required by respondents' product, lacks refinement, is less efficacious, and is otherwise inferior to the lecithin products of the respondents unless in truth and in fact such be the case.

(f) Unlawfully using any patent or patents held by them or any of them in such a manner as to obtain income from the sale of unpatented lecithin rather than from the monopoly expressly granted by the patent or patents.

(g) Combining, conspiring, agreeing, or cooperating between themselves or anyone or more of them, or with others, to eliminate, restrain, or lessen competition between them in the sale of lecithin or lecithin products, by employing a common selling agency or otherwise; provided, that nothing herein shall prevent respondents from entering into or carrying out lawful arrangements for the exercise of rights under patents.

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(h) Carrying out or entering into any agreement or doing any acts in pursuance of an agreement or understanding, that the American Lecithin Co. or any of the respondents connected with the production or sale of lecithin in the United States should refrain from selling or exporting lecithin to foreign countries.

(i) Entering into or carrying out any agreement or understanding with foreign producers or sellers of lecithin for the purpose of lessening, restricting, or curtailing importation of lecithin into the United States or the territories thereof.

(j) Carrying out or entering into any agreement or understanding to refrain from challenging or contesting patents, rights, or privileges concerning the production or use of lecithin or lecithin products held by any of them jointly or individually, which said respondents are not legally precluded from challenging or contesting.

(k) Combining, conspiring, or agreeing or cooperating, or entering into or carrying out any contracts to restrain trade or commerce in lecithin or lecithin products among the several States or with foreign nations.

(l) Monopolizing or attempting to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce in lecithin among the several States or with foreign nations.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents Aarhus Oliefabrik and Hansa-Muehle.

It is further ordered, That the respondents shall, 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.

Order

IN THE MATTER OF

GIMBEL BROTHERS, INC., AND MORRIS KAPLAN & SON,
INC.

MODIFIED CEASE AND DESIST ORDER

Docket 3364. Order, May 8, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, and in accordance with decree below set forth, in proceeding in question, in which original order issued on Dec. 29, 1939, 30 F. T. C. 328, and in which Circuit Court of Appeals for Second Circuit, on Jan. 6, 1941, in *Gimbel Brothers, Inc. v. Federal Trade Commission*, 116 F. (2d) 578, rendered its opinion, and on Jan. 22 issued its final decree, affirming aforesaid order of Commission by modifying same in certain particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of textile fabrics, to forthwith cease and desist from (1) using word "wool" or "woolens," or other word or term descriptive of wool, to describe, etc., any fabric, etc., not composed wholly thereof, and subject to proviso set forth with respect to fabrics, etc., composed in part only thereof, and (2) representing in any manner that fabrics, etc., offered or sold by it contain wool in greater quantities than is actually the case.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on December 29, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondent Gimbel Bros., Inc., a corporation, had violated the provisions of Section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on January 6, 1941, the United States Circuit Court on Appeals for the Second Circuit rendered its opinion and on January 22, 1941, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars;

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree:

It is ordered, That the respondent Gimbel Bros., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: