

IN THE MATTER OF

NATIONAL DISTILLERS PRODUCTS CORPORATION

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

Docket 4425. Complaint, Dec. 19, 1940—Decision, July 30, 1941

Where a corporation engaged in the manufacture, as a by-product from grain left after distillation of whiskey of a semisolid poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac," and "Produlac," and in interstate sale and distribution thereof; by means of letters, circulars, and reprints of testimonial letters, transmitted through the mail and otherwise—

Represented, directly or by implication, that poultry rations frequently are inadequate and must be supplemented by the addition of vitamins and nutritional factors represented as being contained in its said product, and that the use thereof as a supplement to a diet or ration, regardless of whether said diet or ration already contained a sufficient quantity of necessary food elements, would result in a substantial increase of egg production, healthier poultry, high percentage of hatchability of eggs, and a decrease in the mortality rate, as well as other advantages;

Facts being its said product was but one of a class of dried grain after-distillation remnants made as a by-product in whiskey distilleries and sometimes referred to as "stillage" or "distillery slop," and did not contain vitamins and other nutritional factors sufficient to assure aforesaid advantages, which are the result of many factors, such as breed of poultry, general care, feeding, and general health of the flock, in addition to diet; and there is no scientific or other basis for its claim that poultry rations are frequently inadequate or must be supplemented by the addition of vitamin and nutritional factors said to be contained in its product, or that its said product made an excellent replacement or substitute for green feeds or creates a better appetite;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and to cause many members of the public, because of said belief thus engendered, to purchase its said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. D. E. Hoopingarner for the Commission.

Breed, Abbott & Morgan, of New York City, for respondent.

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 National Distillers Products Corporation, hereinafter referred to as respondent, has vio-

lated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Distillers Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its executive offices at 120 Broadway, New York, N. Y., and a distillery and factory at Cincinnati, Ohio, in which it prepares and from which it ships into various States of the United States a poultry feed supplement, hereinafter described. Respondent now is, and for more than 2 years last past has been, engaged in the sale and distribution of said poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac, and Produlac." Said product is a byproduct made from grain used in the distillation of whiskey commonly referred to as "distillery slop."

In the course and conduct of its said business, respondent causes its said product, when sold, to be transported from its plant and factory in the State of Ohio to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said product, respondent has made unwarranted, grossly exaggerated, and misleading representations with respect to the nature and efficacy of its said product. Such representations have been and are being made by means of letters, circulars and reprints of testimonial letters, transmitted by mail and otherwise throughout the various States of the United States (except into and in certain States where respondent has been compelled by requirement of statutes relating to poultry feeds to modify its said representations). Among and typical of such unwarranted, grossly exaggerated, and misleading representations are the following:

Semi-Solid Produlac is a most appetizing, supplementary feed with specific conditioning and stimulating values which are particularly valuable for poultry, ducks and turkeys. It assures greater egg production, increased hatchability, and decreased mortality. With chicks, poults and ducklings, quicker and better gains, improved quality, with better livability follow its feeding.

Semi-Solid Produlac is most appetizing and makes the balance of the ration more palatable. Its stimulating factors cause the greater assimilation of the nutrients in the ration which naturally results in increased egg production, higher percentage of hatchability, and faster, more economical gains with increased vitality in growing birds. The improved health and increased vitality of the

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flock is quite apparent. It possesses specifically acting properties which will restore to normal production birds producing at low levels.

PRODULAC is an appetizing supplementary feed with conditioning and stimulating properties which are valuable for poultry, ducks and turkeys. Greater egg production, increased hatchability and decreased mortality have resulted from its use. With chicks, turkey poults and ducklings, quicker and better gains, improved quality and better livability have followed its feeding.

PRODULAC is appetizing. It makes the balance of the ration more palatable. Its stimulating values have caused increased egg production, higher percentage of hatchability and faster, more economical gains and increased vitality in growing birds.

It can, therefore, be quickly appreciated that PRODULAC, not only due to its appetizing nutritional factors but particularly because of its important biological value, is an effective supplement to the basic feedstuffs. Bear in mind that its potency of Vitamins A, B, C, E, and the increasingly important Vitamin G, makes for the better health and vitality of the flock, decreased mortality, greater production and reproduction, thus producing better operating results and larger profits. and the following representations respecting and claims for its said product:

Great Palatability which creates improved appetite.

Has invariably increased production of eggs.

Has increased hatches to over 90%.

Has maintained flocks in constant better health.

Place it before the birds twice daily for 10 to 15 minutes. An improvement in the health of the birds, increased egg production and larger hatches will soon be noted.

High biological value due to its content of Vitamins A, B, C, E and G.

Has produced broilers of more uniform weight and of superior quality at less cost.

Has increased hatchability—in some cases to over 90%.

Has maintained flocks in better health.

Great palatability which helps to create better appetite.

Makes an excellent replacement for green feeds.

Respondent also represents that its product is recommended by certain State authorities and experiment stations.

Through its said circulation and use of the foregoing representations and others of similar import and meaning not herein set out, respondent represents and implies that poultry rations generally are inadequate and must be supplemented by the vitamins and nutritional factors represented and implied as being contained in sufficient quantities or percentages in its said product; and represents and implies that the addition of its said product as a supplement to a diet or ration already containing the necessary food elements and vitamins results in substantially increased egg production, better health, hatchability of eggs, decreased mortality, and other advantages set forth in its said representations.

PAR. 3. The above and foregoing representations and implications are unwarranted, grossly exaggerated, and misleading. In truth and

in fact, respondent's said product is merely one of a class of dried grain after-distillation remnants, a byproduct of distillation, referred to and commonly called "distillery slop," and it does not have the qualities and efficacy claimed for it by said aforescribed representations and implications, in that the quantity and percentage of vitamins contained therein are not sufficient to produce the results claimed. The claimed results are not produced by any one factor but are the result of many contributing factors, including breed, general care, general feeding, general health of flock, and many other factors in addition to diet. There is no scientific basis for the representation that respondent's product makes an excellent replacement for green feeds or a substitute therefor, and its use does not generally create better appetite or augment the desire for food. Said product is not recommended by any State authority or experiment station.

PAR. 4. The use by the respondent of the aforesaid acts, practices, and methods in connection with the sale and distribution of its said product in said commerce has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications are true, and causes many members of the purchasing public, because of said mistaken and erroneous belief, engendered as aforesaid, to purchase respondent's said product.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 December 19, 1940, issued and thereafter served its complaint in this proceeding upon said respondent, National Distillers Products Corporation, charging it with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent through its counsel, Breed, Abbott & Morgan, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that 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 pro-

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ceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and stipulation, and 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, National Distillers Products Corporation, is a corporation organized and existing under the laws of the State of Virginia, with its executive offices at 120 Broadway, New York, N. Y.

For more than 2 years last past respondent has been and is now engaged in the manufacture of various products prepared as byproducts from grain left after the distillation of whiskey manufactured by respondent. The product which is the subject matter of this action is a semisolid poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac, and Produlac." Said semisolid poultry feed supplement is prepared at a distillery and factory owned and maintained by respondent at Cincinnati, Ohio, from which said product is shipped into various States of the United States.

For more than 2 years last past in the course and conduct of its business, respondent has been and now is causing its said product to be transported from its said distillery and factory in the State of Ohio to the purchasers thereof located in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between various States of the United States.

PAR. 2. In the course and conduct of its said business, respondent has made, published, and caused to be published, by means of letters, circulars, and reprints of testimonial letters, transmitted by mail and otherwise throughout various States of the United States, certain advertising matter containing the following statements, claims, and representations, for the purpose of inducing and which are likely to induce the purchase of its said product:

Semi-Solid Produlac is a most appetizing, supplementary feed with specific conditioning and stimulating values which are particularly valuable for poultry, ducks and turkeys. It assures greater egg production, increased hatchability, and decreased mortality. With chicks, poults and ducklings, quicker and better gains, improved quality, with better livability, follow its feeding.

Semi-Solid Produlac is most appetizing and makes the balance of the ration more palatable. Its stimulating factors cause the greater assimilation of the

nutrients in the ration which naturally results in increased egg production, higher percentage of hatchability, and faster, more economical gains with increased vitality in growing birds. The improved health and increased vitality of the flock is quite apparent. It possesses specifically acting properties which will restore to normal production birds producing at low levels.

PRODULAC is an appetizing supplementary feed with conditioning and stimulating properties which are valuable for poultry, ducks and turkeys. Greater egg production, increased hatchability and decreased mortality have resulted from its use. With chicks, turkey poults and ducklings, quicker and better gains, improved quality and better livability have followed its feeding.

PRODULAC is appetizing. It makes the balance of the ration more palatable. Its stimulating values have caused increased egg production, higher percentage of hatchability and faster, more economical gains and increased vitality in growing birds.

It can, therefore, be quickly appreciated that PRODULAC, not only due to its appetizing nutritional factors but particularly because of its important biological value, is an effective supplement to the basic feedstuffs. Bear in mind that its potency of Vitamins A, B, C, E, and the increasingly important Vitamin G, makes for the better health and vitality of the flock, decreased mortality, greater production and reproduction, thus producing better operating results and larger profits.

Great Palatability which creates improved appetite.

Has invariably increased production of eggs.

Has increased hatches to over 90%.

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Place it before the birds twice daily for 10 to 15 minutes. An improvement in the health of the birds, increased egg production and larger hatches will soon be noted.

High biological value due to its content of Vitamins A, B, C, E, G.

Has produced broilers of more uniform weight and of superior quality at less cost.

Has increased hatchability—in some cases to over 90%.

Has maintained flocks in better health.

Greater palatability which helps to create better appetite.

Makes an excellent replacement for green feeds.

PAR. 3. Through the aforesaid statements and others of similar import not set out herein, respondent has represented or implied that poultry rations frequently are inadequate and must be supplemented by the addition of the vitamins and nutritional factors represented as being contained in respondent's said product; that the use of respondent's product as a supplement to a diet or ration, regardless of whether the diet or ration already contains a sufficient quantity of the necessary food elements and vitamins, will result in a substantial increase of egg production, healthier poultry, higher percentage of hatchability of eggs, and a decrease in the mortality rate and will produce the other advantages mentioned in the aforesaid statements.

PAR. 4. Respondent's product is but one of a class of dried grain after-distillation remnants manufactured in whiskey distilleries as a

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byproduct of whiskey distillation and sometimes referred to as "stillage" or "distillery slop." Said product does not, in and of itself, contain a quantity and percentage of vitamins and other nutritional factors sufficient in themselves to assure increased egg production, healthier poultry, higher percentage of hatchability of eggs, decreased mortality rate, and the other advantages set forth in respondent's said advertising matter.

Increased egg production, better health of poultry, higher percentage of hatchability of eggs and a decreased mortality rate, and the other advantages mentioned in said advertising matter as resulting from the use of respondent's product, are not the result of just one factor but are the result of many contributing factors, including breed of poultry, general care, feeding, and the general health of the flock and many other factors, in addition to diet.

There is no scientific or other basis for a claim, representation or implication by respondent that poultry rations are frequently inadequate, or that poultry rations in general must be supplemented by the addition of the vitamin and nutritional factors represented as being contained in respondent's said product. There is also no scientific or other basis for the representation that respondent's product makes an excellent replacement for green feeds or a substitute therefor, and there is no scientific basis for the claim, representation, or implication that its use creates a better appetite or augments the desire of poultry for food,

PAR. 5. The use by the respondent of the aforesaid statements in connection with the sale and distribution of its said product in commerce, as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications are true and to cause many members of the public, because of said mistaken and erroneous belief, engendered as aforesaid, to purchase respondent's said product.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley,

Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent National Distillers Products Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its semisolid poultry feed supplement sold as "Produlac Brand Semi-Solid Distillers Grains Mash" and "Semi-Solid Produlac" and "Produlac," or any product of substantially similar composition or possessing substantially similar properties, whether sold under said name or under any other name or names, do forthwith cease and desist from representing directly or by implication that when fed to poultry such product:

1. Increases egg production, or produces broilers of more uniform weight and superior quality at less cost, or results in faster and more economical growth of poultry and larger profits to the producer.

2. Improves the health and vitality of growing poultry, or increases the hatchability of eggs, or decreases mortality.

3. Increases the appetite and the ability of such poultry to assimilate foods.

4. Is an effective substitute for green feeds.

It is further ordered, That respondent do forthwith cease and desist from disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains, directly or by inference, any of the representations prohibited in the preceding paragraphs of this order.

It is further ordered, That 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.

IN THE MATTER OF
THE C. F. SAUER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (a) AND (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3646. Complaint, Sept. 29, 1939¹—Decision, July 31, 1941

Where a corporation engaged in the manufacture of mayonnaise and salad dressing in its Greenville, S. C., plant, and in manufacture, packaging, or compounding of extracts, spices, tea, pepper, drugs, insecticides, and other commodities at its Richmond, Va., plant, and in interstate sale and distribution of such products to wholesale grocers, retail chain grocers, and retail grocers;

- (a) Sold its food product of like grade and quality, for use, consumption and resale within the United States, to some purchasers at higher prices than those charged to competing purchasers, and at differentials varying from approximately 5 percent to 25 percent and such that the net price in some cases was lower to the retail chain grocer than to the wholesale grocer to such an extent that the former sold products at retail at a price lower than that at which the wholesaler could purchase such products from it, and such that purchasers charged the lower prices resold products at prices which were only slightly higher than, as low as, or lower than, those at which competing resellers were able to purchase said products from it, so that the latter were unable to resell except at a loss or at insufficient profit, such products, with the result that such material price differences did and might injure, prevent, or destroy competition:

Held, That said discriminations in price were in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and Where said corporation, in consideration of and as compensation for advertising services and facilities contracted to be furnished or furnished by some customers in connection with the handling and sale of said food products—

- (b) Contracted to pay and paid various sums, or in lieu thereof contracted to issue and issued credit memoranda in amounts varying from 5 to 10 percent of the net prices charged by it, while issuing no credit memoranda to other customers, competitive with those compensated as aforesaid, which were willing and able to furnish such services and facilities, and in some instances offered to do so, but offers of which were refused by it:

Held, That said payments and allowances, as above set forth, were in violation of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John W. Addison*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Mr. Simon Michelet, of Washington, D. C., for respondent.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof and hereinafter

¹ Amended.