

Order

IN THE MATTER OF
AGRICULTURAL INSECTICIDE & FUNGICIDE
ASSOCIATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 4145. Order, June 8, 1944

Order, pursuant to provisions of section 5 (i) of the Federal Trade Commission Act, and in accordance with decrees below referred to, in proceeding in question, in which original order issued on July 24, 1942 in Agricultural Insecticide & Fungicide Association et al., Docket 4145, 35 F. T. C. 201, and in which Circuit Court of Appeals for the Second Circuit, on December 23, 1943 in *Phelps Dodge Refining Corp. et al. v. Federal Trade Commission*, 139 F. (2d) 393, 37 F. T. C. 828, unconditionally affirmed the Commission's order as to the six petitioning corporate respondents, and reversed it as to petitioner Demmon, and thereafter on February 21, 1944 entered decrees in accordance with stipulation entered into by the Commission with the petitioning respondents only—

Modifying, as to said petitioning respondents named, said order, which required respondents therein enjoined, in connection with offer, etc., in commerce, of agricultural insecticides, fungicides, and related chemicals and items for similar usage, to cease and desist from entering into, continuing, directing, instigating, or co-operating in, "any common course of action," mutual agreement, etc., to fix, establish or maintain prices, whether on a delivered basis or otherwise, etc., or to make use of the various other practices as there specified; so that as to aforesaid named respondents the above quoted words are changed to read "cooperating in any agreed or planned common course of action"; and

Dismissing complaint as to respondent Demmon.

ORDER MODIFYING ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents named in the caption hereof, and certain stipulations of additional facts, and respondents having expressly waived all intervening procedure and hearing as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, and having entered its cease and desist order herein on July 24, 1942; and, thereafter, the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., Stauffer Chemical Company, Inc., and R. Earl Demmon, having filed in the United States Circuit Court of Appeals for the Second Circuit their petitions for a review of the Commission's said order to cease and desist, entered on July 24, 1942; and, thereafter, on December 23, 1943, the said United States Circuit Court of Appeals for the Second Circuit having unconditionally affirmed the Commission's said order to cease and desist as to the said respondents, Phelps

Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., and Stauffer Chemical Company, Inc., and having reversed the Commission's said order as to the respondent, R. Earl Demmon; and, thereafter a stipulation having been entered into by the Commission, with the petitioning respondents only, that the Commission's said order of July 24, 1942, should be modified to the extent that the language "cooperating in any common course of action" appearing in the Commission's said order to cease and desist entered on July 24, 1942, should be changed to read "cooperating in any agreed or planned common course of action," and thereafter decrees to this effect having been entered on February 21, 1944, with respect to the said petitioners only; now, therefore, in conformity with the decrees entered by the United States Circuit Court for the Second Circuit,

It is ordered, That as to the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Company, Inc., Southern Acid & Sulphur Company, Inc., and Stauffer Chemical Company, Inc., the Commission's said order to cease and desist heretofore entered on July 24, 1942, be and the same hereby is amended and modified to the extent that the language "cooperating in any common course of action" appearing therein be, and the same hereby is changed so as to read "cooperating in any agreed or planned common course of action."

It is further ordered, That the said complaint as to the respondent, R. Earl Demmon be, and the same hereby is dismissed.

It is further ordered, That the Commission's said order to cease and desist as entered herein on July 24, 1942, be and the same hereby is ratified and confirmed in all other respects save and except as herein modified.

Note: The original order (reported with the complaint and findings in 35 F. T. C. 201), follows:

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 Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.) and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and which waives the filing of a report upon the evidence by the trial examiner; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That said respondent, Agricultural Insecticide & Fungicide Association, its officers, agents, and employees; the following respondent corporations, The Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Cyanamid and Chemical Cor-

poration, The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., George W. Cole and Co., Inc., The Hercules Glue Co., Ltd. (a corporation trading under the name of Colloidal Products Corporation), The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. duPont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer and Chemical Co., Inc., The Nicotine Production Corporation, John Powell & Co., Inc., The Sherwin-Williams Co., Inc., The Southern Acid & Sulphur Co., Inc., The Stauffer Chemical Co., Inc., The Tobacco By-Products and Chemical Corporation, The J. W. Woolfolk Co., Ansbacher-Siegle Corporation, General Chemical Co., Phelps Dodge Refining Corporation, and Tennessee Corporation, their officers, agents, and employees; and the following individual respondents, R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, R. E. Demmon, G. F. Leonard, G. E. Riches, and J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., and their respective representatives, agents, and employees, in connection with the offering for sale or sale and distribution of agricultural insecticides, fungicides, and related chemicals and items for similar uses in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, carrying out, directing, instigating, or cooperating in, any common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, with or without the cooperation of others not parties hereto, for the purpose, or with the tendency or effect, of fixing the prices for, or of restricting, restraining, or eliminating competition in, the sale in said commerce of agricultural insecticides, fungicides, or related chemicals and items for similar uses, and from doing any of the following acts and practices pursuant thereto.

1. Fixing, establishing, or maintaining the prices, whether on a delivered basis or otherwise, or the charges at which the products of said respondents are to be sold or offered for sale, or fixing, establishing, or maintaining any method of pricing which deprives buyers of opportunity to obtain more favorable terms from one respondent corporation than from another, or fixing, establishing, or maintaining any discounts, terms, or conditions of sale.

2. Adhering to any price list compiled or distributed by or on behalf of any of the said respondents.

3. Imposing, or attempting or threatening to impose, any penalty on, or coercing, or attempting to coerce by any means, any manufacturer who fails or refuses to adhere to or adopt charges, discounts, terms or conditions of sale, prices, or pricing methods fixed or established by said respondents.

4. Exchanging, distributing, or relaying among respondent members or through respondent Association or any other medium or central agency, price lists or other information showing current or future prices or current or future terms or conditions of sale.

5. Determining or attempting to determine by any means, either directly or indirectly, which purchasers shall be recognized as jobbers of, or as retail dealers in, and thus entitled to certain price differentials on, said products manufactured and sold or offered for sale by said respondents.

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6. Furnishing to the respondent Association, or to any other central medium or agency, any list or lists of jobbers or retail dealers or any classification of customers as jobbers or retail dealers and thus entitled to certain price differentials on products sold or offered for sale by any of the said respondents.

7. Compiling or distributing in any manner, either directly or indirectly, between and among any of the respondents, lists of names or classifications of dealers or users who are to be sold by any of said respondents.

8. Holding or participating in any meetings, discussions, or exchanges of information concerning proposed or future prices, terms or conditions of sale, or concerning any actual or proposed recognition or classification as jobber or retail dealer of any customer to whom the products of any of said respondents are sold or offered for sale.

9. Taking any action for the purpose, or with the effect, of preventing or hindering any dealer or user or any class of dealers or users from obtaining the products manufactured by the respondents, or any of them, at such prices and terms as may be satisfactory between the individual buyer and seller.

10. Continuing or resuming by tacit and common consent among two or more respondents, any practice herein forbidden when such continuation or resumption results in purchasers being prevented from obtaining more favorable prices, terms, or conditions of sale from one of respondent corporations than from the others.

It is further ordered, That the complaint herein be, and it hereby is dismissed as to the following named respondents: Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.

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.

Complaint

IN THE MATTER OF

THE PRIME MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4978. Complaint, June 8, 1943—Decision, June 13, 1944*

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Prime Electric Fence Controller"; in advertising in trade journals, folders, circular letters and other advertising material, directly or by implication—

Falsely represented that its said electric fence controllers were free of trouble; that use thereof ended fencing worries; that said controller was a positive, sure or certain method of confining livestock, and would prevent the escape of livestock under all conditions; and that only an electric fence equipped with a "Prime Electric Fence Controller" was respected by animals;

The facts being it was not the only fence controller respected or feared by livestock, and an electric fence equipped with its electric fence controller would not confine fence breakers without prior and proper training of such animals by causing them to come in contact with the wire or wires charged with electricity, nor confine all livestock and particularly any animal of a size which would permit it to pass readily under or over the wire without contact, nor any animal whose natural covering or coat would serve to insulate it from electric shock at the point of contact with the wire;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of its product because of such mistaken belief:

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

Mr. Jesse D. Kash for the Commission.

Lecher, Michael, Spohn & Best, of Milwaukee, Wis., 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 The Prime Manufacturing Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Prime Manufacturing Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1669 S. First Street, Milwaukee, Wis. The respondent is now, and for more than two years last past has been, engaged in the business of manufacturing and selling electric fence controllers, designated "Prime Electric Fence Controller." Respondent causes its said product, when sold, to be transported from its aforesaid place of business in the State of Wisconsin to