

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

MODIFIED CEASE AND DESIST ORDER

Docket 4145. Order, December 14, 1944

Order, pursuant to provisions of Section 5 (b) of the Federal Trade Commission Act, in proceeding in question; in which (1) the original order issued on July 24, 1942, in Agricultural Insecticide and Fungicide Assn., et al, Docket 4145, 35 F.T.C. 201; (2) the 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; and (3) the Commission on June 8, 1944, pursuant to the provisions of Sec. 5 (i), and in accordance with the decrees above referred to, modified, as to said petitioning respondents only, 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 cooperating 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 respondents, the above quoted words were changed to read “cooperating in any agreed or planned common course of action”; and (4) dismissed the complaint as to respondent Demmon;

Modifying similarly as to the other respondents joined in said original order, the aforesaid language so as to read, as applied to them also, “cooperating in any agreed or planned common course of action”; and

Ratifying and confirming in all other respects save as thus modified the original cease and desist order entered on July 24, 1942.

MODIFIED 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, and certain stipulations of fact, 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, entered its cease and desist order herein on July 24, 1942. Thereafter, the respondents, Phelps-Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Co., Inc.,

Southern Acid & Sulphur Co., Inc., Stauffer Chemical Co., 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 & Co., Inc., Southern Acid & Sulphur Co., Inc. and Stauffer Chemical Co., 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; and, thereafter, on June 8, 1944, the Commission having entered its order modifying its order to cease and desist entered on July 24, 1942, with respect to the petitioning respondents so as to conform to the decrees entered by the United States Circuit Court of Appeals for the Second Circuit; and, thereafter, on motion of the attorney for the Federal Trade Commission, the Commission, on July 5, 1944, having entered an order directing that a copy of said motion be served upon said respondents and requiring said respondents within twenty days after service upon them of said motion to show cause, if any, they could, in writing, why said order to cease and desist heretofore entered herein on July 24, 1942, should not be so modified, in accordance with said motion, 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, be changed to read "cooperating in any agreed or planned common course of action" as to all of said respondents, and, thereafter, the said period of twenty days within which said respondents were directed to show cause why said order should not be so modified in accordance with said motion having expired; now, therefore,

It is ordered, That in accordance with the provisions of Section 5(b) of the Federal Trade Commission Act, due notice having been served on said respondents, this matter be, and the same hereby is, reopened for the purpose only of modifying the order to cease and desist heretofore entered herein on July 24, 1942.

It is further ordered, That, as to the respondents, Agricultural Insecticide & Fungicide Association, the Acme White Lead and Color Works, The American Agricultural Chemical Co., 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. du Pont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer & Chemical Co., Inc., The Nicotine Production Corporation, The Sherwin-Williams Co., Inc., The Tobacco By-Products & Chem-

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ical Corporation, The J. W. Woolfolk Co., Ansbacher-Siegle Corporation, General Chemical Co., R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, 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., 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"; and

It is further ordered, That the Commission's said order to cease and desist, as entered herein on July 24, 1942, (and as modified on June 8, 1944) be, and the same hereby is, ratified and confirmed in all other respects save and except as herein modified.

It is further ordered, That the respondents upon whom this modified order is served are excused from the filing within 60 days of any new compliance reports, in view of the fact that they have previously filed reports of compliance with the broader form of order originally entered in the case on July 24, 1942.

Syllabus

IN THE MATTER OF

ED. W. ARNOLD COMPANY, A COMMON LAW TRUST
DOING BUSINESS UNDER THE TRADE NAMES, EDWARD
W. ARNOLD COMPANY AND EDW. W. ARNOLD COM-
PANY; AND ED. W. ARNOLD INDIVIDUALLY AND AS
SOLE TRUSTEE

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

Docket 4818. Complaint, Aug. 20, 1942—Decision, Dec. 20, 1944

Where a common law trust and an individual, its sole trustee, engaged in the manufacture and interstate sale and distribution of (1) a bath cabinet in two models, for patients sitting or reclining, designated, respectively as the "Electro Vaporized Mineral Bath" and as the "New DeLuxe Multi Treatment" heated electrically through a device installed in the bottom known as a vaporizer or vapor generator, in which there might also be placed some volatile medicinal product such as mineral oil or pine needle extract, and of (2) a massaging device consisting of a wooden handle and 12 small rubber rollers; in advertisements of its said products in periodicals of national circulation and through circulars, pamphlets and other advertising material, directly or by implication—

- (a) Falsely represented that the use of their said bath cabinet constituted a cure or remedy and a competent and effective treatment for diabetes, high blood pressure, asthma, fevers, toxic or acid conditions, kidney trouble, blindness, gonorrhea cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, sleeping sickness, blood poison, poisons from bad teeth, or rheumatic fever, and various other ailments and conditions; and
- (b) Falsely represented that their said cabinet was a cure or remedy and a competent and effective treatment for rheumatism, lumbago, and neuritis, St. Vitus Dance, insomnia, and headaches;

The facts being that it possessed no therapeutic value in the treatment of said conditions except in so far as it might, through the application of heat, afford temporary relief for the pains accompanying rheumatism, lumbago and neuritis, temporary comfort and relaxation in the case of St. Vitus Dance, temporary soothing and relaxing in the case of insomnia, and upon the nerves in the case of nervous headache; and the therapeutic benefits afforded by the use of the cabinet were limited to such temporary benefits as might result from application of heat, substantially the same results being obtainable through an ordinary warm tub bath or, in certain cases, through a hot water bottle or electric pad;

- (c) Falsely represented that use of said cabinet would reduce obesity, build up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat poisons, neutralize bacterial poisons, cell wastes and other undesirable matter, and eliminate them;
- (d) Falsely represented that use thereof would rejuvenate and vitalize the nervous system; cleanse and purify the blood, eliminate contraction of the blood capillaries, thin the blood, neutralize and eliminate toxins or poisons, increase oxidation and