

IN THE MATTER OF
LEMUEL FIRTH, ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 5065. Order, October 22, 1945

Modified order in proceeding in question in which original order issued on May 4, 1945, 40 F. T. C. 570, making the prohibitions of said original order (in connection with the offer, etc. of fish in commerce) against entering into, etc., any planned common course of action, etc., to restrict the quantity of fish to be caught and sold to dealers; fixing the price at which fish are to be sold to dealers in any market; etc.; as in said order below set forth; subject to the provision that the order shall not be construed so as to impair any right of respondents to organize and act in the manner and to the extent provided for by the Act of Congress authorizing associations of producers of aquatic products, approved June 25, 1934 (48 Stat. 1213-1214; 15 U.S.C., Sec. 521-522).

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

Mr. Everett F. Haycraft for the Commission.

Mr. William J. MacInnis, of Gloucester, Mass., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having heretofore been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act, the Commission on May 4, 1945, issued and subsequently served upon the respondents its order requiring the respondents to cease and desist from the acts and practices therein set forth;

And the respondents having on June 28, 1945, filed with the Commission a petition for the modification of said order to cease and desist in certain respects, and the Commission having duly considered said petition and the record herein and being now fully advised in the premises:

It is ordered, That said order to cease and desist be. and it hereby is, modified to read as follows:

It is ordered, That the respondents, Lemuel Firth, Cyril Dyett, Jack Barrett, Frank Foote, Cy Tysfer, Benedetto Randazza, Phillip Curcuro, Thomas Scola, Joseph Sinagra, Peter Scola, Joseph Parisi, Frank Mineo, Isodoro Tarantino, Peter Mercurio, Paul Scola, Gerome Frontiero, Philip Nicastro, Leo Favalaro, and Alphonse Mineo, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fish in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement,

understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties to this proceeding, to do or perform any of the following acts or things:

1. Restricting the quantity of fish to be caught and sold to dealers.
2. Fixing the price at which fish are to be sold to dealers in any market, or establishing or maintaining any price differential between or among different markets.
3. Prescribing the length of time a boat carrying fish to market shall remain in port.
4. Prohibiting the use of the radio phone in carrying on negotiations for the sale of fish.
5. Holding meetings for the purpose of reaching agreements governing the quantity of fish to be caught or the price at which fish are to be sold.
6. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform prices for fish.

Provided, however, That this order shall not be construed so as to impair any right of respondents to organize and act in the manner and to the extent provided for by the Act of Congress authorizing associations of producers of aquatic products approved June 25, 1934 (48 Stat. 1213-1214: 15 U.S.C., Sec. 521-522).

It is further ordered, That the respondents shall, within 60 days after service upon them of this modified 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.

IN THE MATTER OF

J. E. DONALDSON, H. M. DONALDSON, AND L. M. HAGEMAN
TRADING AS MIRRA CHEMICAL LABORATORIES

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

Docket 5301 Complaint, Mar. 29, 1945—Decision, Oct. 30, 1945

The word "laboratories" or the words "chemical laboratories" are used by those who own, operate, or control a laboratory or place where products are tested, mixed, blended, and compounded, and where the ingredients thereof are subjected to scientific experimentation and research to determine their purity and usefulness

Where two individuals engaged in competitive interstate sale and distribution of a moth preventive product under the designation "Mirra Moth Immunizer"—

- (a) Represented through statements in advertisements in newspapers, periodicals, circulars, leaflets, pamphlets, and stickers, and on cartons and labels and in other advertising literature, that the formula for their said immunizer was given in 1928, or shortly thereafter, to one of them for use in his home in Florida, by Dr. George Washington Carver, and soon after the death of Dr. Carver in 1943, advertised and placed their said products on the market as an original formula of his and his discovery;

The facts being said formula was not an original formula of, nor discovered by said Dr. Carver, the distinguished negro scholar, and was not a new or amazing or sensational discovery; the active ingredients thereof were well known standard commercial chemicals, which had been used over a long period in combatting moths, and to which said individual had added certain inert ingredients to give the product clarity of color and agreeable odor, and to effect suspension of its chemical ingredients;

- (b) Represented as aforesaid that their said solution killed moths and carpet beetles upon contact, that one application thereof lasted for years, and that it was permanent when applied as directed, and described it as "the new scientific miracle that immunizes all fabrics and furs";

The facts being that it was not a contact spray and did not kill insects on contact, but needed to be eaten by them to cause death; and while, when properly applied, it might afford protection against moths for limited periods of time, its moth-proofing effects were not "permanent," were not applicable for the protection of all fabrics in general, but only for wool, felt and fur products, and one application thereof could not be stated accurately to moth proof articles for years, since no solution will permanently mothproof fabrics, dry cleaned or otherwise;

- (c) Advertised falsely as aforesaid, that their product was "the choice of the textile manufacturers";

The facts being that while it had been made available to some wool fabricators and textile manufacturers through the medium of respondents' larger outlets, many used other moth-proofing products; they had canvassed only a small portion of the textile manufacturers to ascertain which ones used their product;

- (d) Represented through use of word "laboratories" in their trade name "Mirra Chemical Laboratories," in advertisements and on labels and cartons as aforesaid, that they owned, operated or controlled a chemical laboratory;

The facts being that while they maintained at their address a processing and mixing plant where the various ingredients composing said product were mixed and pro-