

IN THE MATTER OF

NATIONAL PRESSURE COOKER COMPANY, LEWIS E. PHILLIPS, A. E. DE BONVILLE, MORTON PHILLIPS, ED H. WHITTENBERG, MARGARET M. WHELIHAN, AND J. PHILLIPS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5531. Complaint, Mar. 30, 1948—Decision, Oct. 20, 1948

Where a corporate manufacturer of aluminum articles, including its "Presto" pressure cooker and a large pressure canner—the world's largest manufacturer of such cookers and canners—which it sold and distributed to wholesale distributors, department stores and chain stores throughout the United States;

In dealing with a substantial number of its wholesale distributors, through whom for a recent 6 months' period they had made more than 52 percent of their dollar sales, and acting under the direction of its president, vice-presidents, and treasurer;

- (a) Made sales of its said pressure cookers and pressure canners on the condition that the purchasers should not use or deal in its competitors' pressure cookers or canners or their component parts or accessories; and,
- (b) To induce its distributors to acquiesce in such arrangement, offered to them, shortly after the end of World War II when the demand for such merchandise exceeded available supplies, favorable and adequate shipment allocations of its products on the said condition; and,
- (c) Threatened to cut off or curtail the supply of pressure cookers and pressure canners, to wholesale distributors who were not willing to enter into said exclusive dealing arrangement;

Whereby it induced or forced many of its said distributors to agree to handle only its pressure cookers and canners, in order to continue their representation in the sale of its products;

Effect of which was to substantially lessen competition with it and to tend to create a monopoly in it in the sale in commerce of said products and parts and accessories, to the injury and prejudice of its competitors and the public;

Held, That such acts and practices constituted a violation of sec. 3 of the Clayton Act, and unfair methods of competition in commerce within the intent and meaning of sec. 5 of the Federal Trade Commission Act.

Mr. William C. Kern for the Commission.

Mr. Samuel H. Maslon, of Minneapolis, Minn., for respondents.

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COMPLAINT

COUNT I

The Federal Trade Commission having reason to believe that National Pressure Cooker Co., a corporation; and Lewis E. Phillips, A. A. DeBonville, Morton Phillips, Ed Whitenberg, Morgan M. Whelehan, and J. Phillips, individually and as officers of said corporate respondent, hereinafter referred to as respondents, have violated and are now violating the provisions of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act), hereby issues this its complaint against said respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. The respondent, National Pressure Cooker Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its offices, factory, and principal place of business at Eau Claire, Wis. Respondent Lewis E. Phillips is the president; respondents A. A. DeBonville, Morton Phillips, and Ed Whitenberg are the vice presidents; respondent Morgan M. Whelehan is the secretary; and respondent J. Phillips is the treasurer of the corporate respondent, all of whom have their offices at the same place of business as said corporation. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Corporate respondent acting under the direction of the individual respondents now is and has been for more than 3 years last past engaged in the manufacture and sale of various items made from aluminum, principally cooking utensils; the principal items of manufacture and sale are pressure cookers which are advertised and sold under the trade name "Presto," and a large size pressure canner. Corporate respondent is the world's largest manufacturer of pressure cookers and pressure canners and occupies a dominant position in the manufacture and sale of pressure cookers and pressure canners. Corporate respondent acting under the direction of the individual respondents now sells, and for more than 3 years last past, has been selling the products which it manufactures to distributors or wholesalers, department stores and chain stores located throughout the several States of the United States, the Territories thereof, and in the

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District of Columbia, causing said products when sold to be transported from the place of manufacture in the State of Wisconsin to the purchasers thereof located in States other than the place of manufacture thereof, and there is now and has been for many years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, as herein described, corporate respondent has been for more than 3 years last past, and now is, in substantial competition in the sale of cooking utensils, including pressure cookers and pressure canners, in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia, with other corporations and with persons, firms, and partnerships.

PAR. 4. In the course and conduct of the business of corporate respondent described in paragraphs 1, 2, and 3, corporate respondent acting under the direction of the individual respondents, in the course of such commerce has made sales and contracts for sale and is still making sales and contracts for the sale of cooking utensils, including pressure cookers and pressure canners, on the conditions, agreements, and understandings that the purchasers thereof shall not use or deal in the cooking utensils, including pressure cookers and pressure canners, or other goods, wares, merchandise, machinery supplies, or other commodities of a competitor or competitors of the corporate respondent.

PAR. 5. The effect of such sales and contracts for sale on such conditions, agreements, and understandings may be, has been and still is to substantially lessen competition with corporate respondent or to tend to create a monopoly in corporate respondent in the commerce aforesaid of cooking utensils, including pressure cookers and canners.

PAR. 6. The aforesaid acts of said respondents National Pressure Cooker Co., Lewis E. Phillips, A. A. DeBonville, Morton Phillips, Ed Whitenberg, Morgan M. Whelehan, and J. Phillips, constitute a violation of the provisions of section 3 of the hereinabove-mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

COUNT II

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

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Trade Commission, having reason to believe that National Pressure Cooker Co., a corporation, and Lewis E. Phillips, A. A. DeBonville, Morton Phillips, Ed Whitenberg, Morgan M. Whelehan, and J. Phillips, individually and as officers of said corporate respondent, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAP^H 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 2 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 2 of said count 1 were set out in full herein, and said paragraph 2 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 3 of said count 1 were set out in full herein, and said paragraph 3 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 4 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 4 of said count 1 were set out in full herein, and said paragraph 4 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 5. In the course and conduct of the business of corporate respondent as hereinbefore described and in pursuance of the practices and acts alleged in paragraph 4 hereof, corporate respondent acting under the direction of the individual respondents, for more than 3 years last past, has employed and now employs the following unfair methods of competition, to wit:

(a) Many wholesale distributors are encouraged to submit firm orders to corporate respondent representing estimated annual requirements of corporate respondent's pressure cookers and pressure canners, and upon receipt of such orders corporate respondents designates

a shipping schedule indicating monthly volume allocations in which such annual volume orders will be filled and shipped to such wholesale distributors. In reliance thereon the wholesale distributors book advance orders from retail dealer customers for future delivery. However, instead of filling the orders of such wholesale distributors in accordance with the indicated monthly shipping schedule, corporate respondent acting under the direction of the individual respondents and through its sales officials or field representatives demands that such wholesale distributors deal exclusively with corporate respondent and demands that such wholesale distributors shall not deal in or sell the pressure cookers or pressure canners of competitors of corporate respondent; in some cases demand is even made that such wholesale distributors shall not deal in or sell the entire manufacturing line of products of competitors of respondent.

(b) Efforts have been made to induce, coerce, or compel wholesale distributors and wholesale distributors have been induced, coerced, or compelled to cancel orders for pressure cookers and pressure canners placed with competitors of corporate respondent, by bringing undue pressure to bear upon such wholesale distributors to whom said competitors were selling their said products. Such undue pressure exerted by corporate respondent acting under the direction of the individual respondents and through the field sales representative or sales officials of corporate respondent usually has been in the form of threats to cut off entirely or to reduce the supply of pressure cookers and pressure canners sold by corporate respondent to such wholesale distributors. Said products have been and now are in short supply but in great demand by retail dealers and the purchasing public. Corporate respondent is the largest producer and manufacturer of said products, and its volume of production of such products is larger than that of any of its competitors.

PAR. 6. The acts and practices of the respondents as herein alleged are all to the injury and prejudice of competitors of corporate respondent and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of cooking utensils, including pressure cookers and pressure canners, in commerce within the intent and meaning of the Federal Trade Commission Act, and constitute unfair methods of competition 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 an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monop-

olies, and for other purposes," approved October 15, 1914 (the Clayton Act), and to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 30, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with having made sales and contracts for the sale of cooking utensils on the condition, agreement or understanding that the purchasers thereof should not use or deal in the cooking utensils of a competitor or competitors of respondent National Pressure Cooker Co. in violation of the provisions of section 3 of said Clayton Act, and with the use of unfair methods of competition in commerce in the sale and distribution of cooking utensils in violation of the provisions of the Federal Trade Commission Act.

After the issuance of said complaint and the filing of the respondents' joint and several answer thereto a written stipulation was entered into by and between the respondents, by their counsel, and Richard P. Whiteley, chief trial counsel of the Commission, in which it was provided that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of all evidence, and that the 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 stipulated facts, and its conclusion based thereon, and enter its order disposing of this proceeding, without the filing of briefs and without any further procedure. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer and the stipulation, said stipulation having first been approved, accepted and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, National Pressure Cooker Co., hereinafter sometimes referred to as corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its offices, factories and principal place of business located at Eau Claire, Wis. Respondent Lewis E. Phillips is the president; respondents A. A. De Bonville, Morton Phillips, and Ed H. Wittenberg (erroneously designated in the complaint as Ed Whitenberg) are the vice presidents; respondent Mar-

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garet M. Whelihan (erroneously designated in the complaint as Morgan M. Whelehan) is the secretary; and respondent J. Phillips is the treasurer of the corporate respondent (all of whom have their offices for corporate purposes in the same place of business as said corporate respondent). With the exception of respondent Margaret M. Whelihan, the above-named individual respondents direct and control the sales policies and business activities of the corporate respondent, and said individual respondents have acted together and in cooperation with each other in connection with the acts and things hereinafter found. Respondent Margaret M. Whelihan does not participate in the sales policies and business activities of the corporate respondent so as to be responsible in any manner for the activities of said corporate respondent and the other individual respondents.

PAR. 2. The corporate respondent, acting under the direction of the individual respondents, with the exception of respondent Margaret M. Whelihan, now is and for more than 3 years last past has been engaged in the manufacture and in the sale and distribution of various articles made from aluminum, the principal items of which are pressure cookers which are advertised and sold under the trade name "Presto," and a large size pressure canner. Corporate respondent is the world's largest manufacturer of pressure cookers and pressure canners. Corporate respondent, acting under the direction of the individual respondents, with the exception of Margaret M. Whelihan, now sells and for more than 3 years last past has been selling products which it manufactures to distributors or wholesalers, department stores and chain stores located throughout the several States of the United States, the Territories thereof, and in the District of Columbia, causing said products when sold to be transported from the place of manufacture in the State of Wisconsin to the purchasers thereof located in States other than the place of manufacture thereof. There is now and for many years last past there has been a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

PAR. 3. The corporate respondent now is and for more than 3 years last past has been in substantial competition in the sale of pressure cookers and pressure canners and component parts thereof and accessories thereto, in commerce between and among the various States of the United States, and Territories thereof, and in the District of Columbia, with other corporations and with persons, firms and partnerships.

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PAR. 4. In the course and conduct of its business, the corporate respondent, acting under the direction of the individual respondents, with the exception of respondent Margaret M. Whelihan, has made sales and contracts for the sale of pressure cookers and pressure canners on the condition, agreement and understanding that the purchasers thereof should not use or deal in the pressure cookers or pressure canners or the component parts thereof or accessories thereto, of a competitor or competitors of said corporate respondent. Said condition, agreement and understanding as above described have been included in sales and contracts for sale made by the corporate respondent to and with a substantial number of its wholesale distributors, which wholesale distributors constitute an important portion of its plan and method of distribution to retail purchasers and ultimately the purchasing public. The methods of distribution of the corporate respondent's pressure cookers and pressure canners and the relative importance of said methods of distribution are reflected by the following sales records of the corporate respondent for the 6 months' period ending March 31, 1947, which show total gross dollar sales of pressure cookers and pressure canners to the various classes of customers of the corporate respondent, as follows:

		<i>Percent</i>
Distributors—jobbers and wholesalers.....	\$8, 718, 553. 80	52. 3
Chain stores.....	1, 920, 377. 88	11. 5
Department stores, direct dealers, foreign sales, and miscellaneous	6, 028, 979. 06	36. 2
Total.....	16, 667, 910. 74	100. 0

PAR. 5. In pursuance of its practice of selling and contracting to sell its pressure cookers and pressure canners on the condition, agreement and understanding that the purchasers thereof should not use or deal in the comparable products of a competitor or competitors, the corporate respondent, acting under the direction of the individual respondents, with the exception of respondent Margaret M. Whelihan, has taken such steps as were necessary to induce its distributors to acquiesce in the arrangement. One of the practices followed by the corporate respondent for this purpose has been to offer to its distributors favorable and adequate shipment allocations of its products on the express condition that the distributors should not handle any of the pressure cookers or pressure canners of any of its competitors. Such practice was pursued and was particularly effective shortly after the end of World War II when the demand of distributors for such merchandise exceeded the available manufacturing supply. As a

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result thereof many distributors were induced to and did enter into arrangements with the corporate respondent under the terms of which the distributors were not to deal in the pressure cookers or pressure canners or the component parts thereof or accessories thereto of any of the corporate respondent's competitors.

Such practice was involved in an instance disclosed in part in an excerpt from a letter written by the corporate respondent to one of its wholesale distributors on February 15, 1946, which is as follows:

Based on the fact that you will handle only our lines of pressure sauce pans and pressure cookers as soon as your present order expires with the one competitor, we will be willing to make you definite monthly shipments as follows on Presto cookers:

February	2,000
March	2,200
April	2,400
May	2,600
June	2,800
July	3,000
August	3,200
September	3,400
October	3,600
November	3,800
December	4,000
Total	33,000

We know that once you are on a 100% exclusive basis that we will then be in a position to bend over backwards to get more and more cookers to you.

By such practices as aforesaid, as well as by the practice of threatening to cut off the supply of pressure cookers and pressure canners or to curtail the supply thereof to wholesale distributors who were not willing to enter into the exclusive dealing arrangement, the corporate respondent forced many of its wholesale distributors to agree to handle only the corporate respondent's pressure cookers and pressure canners in order to continue their representation in the sale of corporate respondent's products.

PAR. 6. The effect of the sales and contracts for sale on the aforesaid condition, agreement and understanding has been to substantially lessen competition with corporate respondent and to tend to create a monopoly in corporate respondent in the sale in commerce of pressure cookers and pressure canners and the component parts thereof and accessories thereto. The acts and practices of all of said respondents, with the exception of respondent Margaret M. Whelihan, are all to the injury and prejudice of competitors of the corporate respondent

and of the public, and have a dangerous tendency to, and have, hindered and prevented competition in the sale of pressure cookers and pressure canners and the component parts thereof and accessories thereto.

CONCLUSION

The acts and practices of the respondents, except respondent Margaret M. Whelihan, as hereinabove set out, constitute a violation of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act) and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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 respondents' joint and several answer thereto, and a stipulation as to the facts entered into by and between the respondents, by their counsel, and Richard P. Whiteley, chief trial counsel of the Commission, in which it was provided, among other things, that subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of all evidence, and that the 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 stipulated facts, and its conclusion based thereon, and enter its order disposing of the proceeding without the filing of briefs or other intervening procedure; and the Commission, having approved said stipulation and having made its findings as to the facts and its conclusion that said respondents have violated section 3 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), and the provisions of section 5 of the Federal Trade Commission Act:

It is ordered that the respondent National Pressure Cooker Co., a corporation, and its officers, and the respondents Lewis E. Phillips, A. A. DeBonville, Morton Phillips, Ed H. Wittenberg, and J. Phillips, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in interstate commerce of pressure

cookers, pressure canners, and the component parts thereof and accessories thereto, do forthwith cease and desist from :

(1) Selling or making any contract for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the pressure cookers or pressure canners, or component parts thereof or accessories thereto, of a competitor or competitors of the corporate respondent ;

(2) Enforcing or continuing in operation or effect any condition, agreement or understanding in or in connection with any existing sales contract which condition, agreement or understanding is to the effect that the purchaser of said products shall not use or deal in the pressure cookers or pressure canners, or component parts thereof or accessories thereto, of a competitor or competitors of the corporate respondent ;

(3) Offering favorable shipment allocations, or any other inducement, to distributors or other purchasers or prospective purchasers of such products on the condition, agreement or understanding that such distributors or other purchasers or prospective purchasers shall not use or deal in the pressure cookers or pressure canners, or component parts thereof or accessories thereto, of a competitor or competitors of the corporate respondent ;

(4) Refusing, or directly or by implication threatening to refuse, to deliver such products to distributors or other dealers who are not willing to purchase or contract for the purchase of such products on the condition, agreement or understanding that they shall not use or deal in the pressure cookers or pressure canners, or component parts thereof or accessories thereto, of a competitor or competitors of the corporate respondent ;

(5) Directly or indirectly inducing or attempting to induce any distributor of such products, or other customer of the corporate respondent, to cease or refrain from using or dealing in the pressure cookers or pressure canners, or component parts thereof or accessories thereto, of a competitor or competitors of the corporate respondent.

It is further ordered, for reasons appearing in the findings as to the facts, that the complaint herein be, and it hereby is, dismissed as to the respondent Margaret M. Whelihan.

It is further ordered that the respondents shall, within 60 days after the 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.

Syllabus

IN THE MATTER OF
AMERICAN VISCOSE CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4862. Complaint, Oct. 30, 1942—Decision, Oct. 22, 1948*

There are, in fact, no quality standards generally recognized, or used for grading rayon products.

Where a corporation which was engaged in the manufacture and competitive interstate sale and distribution of rayon fibers and yarns, chiefly to textile manufacturers and converters, was one of the largest producers of such products, and made use, in the operation of its business, of its "Quality Control Plan," designed to promote consumer acceptance of fabrics or garments made from its yarn—pursuant to which it entered into contracts with converters and manufacturers of finished products in which the fabric was composed of at least 50 percent of its said fibers, whereby (subject to the submission to it of samples for test and approval, and also of certain other information) the converter or manufacturer was authorized to make use of its "Crown Quality Control Plan" tags, labels or other marks of identification, which contained its "Crown" trade-mark, informed the consumer that the fabric concerned was "Crown Tested and Approved," contained "Crown" rayon, had been constructed and finished according to definite standards, and had been tested for specified characteristics such as tensile strength, seam strength, color-fastness, dry-cleanability or washability;

In widely publicizing certain aspects of its said plan, through such statements on said tags or labels furnished by it to others and in large numbers of advertisements in newspapers and periodicals with interstate circulation as:

"CROWN TESTED AND APPROVED RAYON FABRIC. WHAT DOES CROWN TESTED MEAN? It means that this fabric has been woven and finished according to high standards for consumer satisfaction. Samples of this fabric have been tested and approved by the Better Fabric Testing Bureau, Inc., official laboratory of the National Retail Dry Goods Association for tensile strength, seam strength, color-fastness and dry-cleanability;"

"What is the fabric content? 'Will this garment wash?' 'How will it wear?' 'How do I care for it?' 'Should it be dry cleaned?' These and dozen of other questions are being asked today by consumer groups from coast-to-coast. These and similar questions are asked seriously—They deserve serious and authoritative answers. The Crown Tested tag or label answers them seriously and with authority of the National Retail Dry Goods Association behind it for no merchandise containing rayon can bear the tag or label of Crown Tested identification unless it contains Crown Rayon and has been tested against consumer standards established by the National Retail Dry Goods Association and been approved by that Association's own laboratory;" and

"Crown tested identification enables you to give your customers the information they want: the information they are demanding and because