

IN THE MATTER OF
BASIC VEGETABLE PRODUCTS, INC. ET AL.

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

Docket 5939. Complaint, Dec. 13, 1951—Decision, Mar. 18, 1952

Where two dehydrators and processors of onions and garlic with dominant positions in said industry in the United States and two other important corporate factors in dehydrating and processing onions, all of which were engaged in the packing, distribution, offer and sale of onion powder, garlic powder, onion flakes and garlic flakes, and also in processing various other forms for use by food packers, processors and others as seasoning agents; which by virtue of their aggregate production and sales volumes had the power to and, as below set forth, did exercise actual control of the market prices thereof; were in competition with one another except for the restraints herein concerned; and, confronted by the fact that production of dehydrated onion flakes had exceeded national consumption thereof, disseminated advice among themselves not to cut prices below the going market prices for said products;

Acted unlawfully to suppress competition by entering into and carrying out an understanding and planned common course of action between and among themselves and with others with respect to their pricing practices, and pursuant thereto—

- (1) Exchanged information concerning prices, terms and conditions of sale, trade discounts and volume discounts, and made known among themselves their bid quotations in connection with particular transactions;
- (2) Attempted to and to a large extent did fix, stabilize and maintain uniform prices, uniform terms and conditions of sale, and uniform trade and volume discounts;
- (3) Held formal and informal conferences and meetings at which were discussed prices, terms and conditions of sale, trade discounts and volume discounts to be adopted by them; and
- (4) Entered into agreements and other arrangements for competing sellers to fix, stabilize, maintain, and make uniform resale prices, terms and conditions of sale of said products, adopted and maintained methods and policies of merchandising to effectuate such resale price maintenance agreements;

Held, That said combination and agreements, acts and practices, in one or more of which each respondent participated, were all and singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to hinder competition and create monopoly, and because they oppressively restricted the activities of competing sellers, including distributors and jobbers, and otherwise restrain competition in the sale in commerce of the products concerned; and constituted unfair methods of competition and unfair or deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.
Mr. Leslie S. Miller for the Commission.

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Mr. Robert E. Freer, of Washington, D. C., and *Mr. Arthur B. Dunne*, of San Francisco, Calif., for Basic Vegetable Products, Inc.

Gibson, Dunn & Crutcher, of Los Angeles, Calif., for Gentry, Inc.

Mr. Donald B. Fowler, of Turlock, Calif., for Puccinelli Packing Co.

Mr. L. E. Haight, of Boise, Idaho, for J. R. Simplot Co.

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 parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated section 5 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 as follows:

PARAGRAPH 1. Respondent Basic Vegetable Products, Inc., is a California corporation, incorporated June 11, 1945, and has its office and principal place of business at 315 Montgomery Street, San Francisco, California.

Respondent Gentry, Incorporated, is a California corporation, incorporated January 19, 1946, and has its office and principal place of business at 837 North Spring Street, Los Angeles, California.

Respondent Puccinelli Packing Company is a California corporation, incorporated May 1, 1946, and has its office and principal place of business in Turlock, California.

Respondent J. R. Simplot Company is an Idaho corporation, incorporated February 28, 1946, and has its office and principal place of business in the Idaho National Bank Building, North 10th Street and West Idaho Street, Boise, Idaho.

PAR. 2. Respondents are engaged in the dehydration and processing of either onions or garlic or both, which are packed, distributed, offered for sale, sold and shipped as onion powder, garlic powder, onion flakes, garlic flakes, and also onions and garlic in various and divers other forms for use by food packers, processors, and others as seasoning or flavoring agents.

PAR. 3. Respondents, in the regular course and conduct of their business, sell and ship, or cause to be sold and shipped, either directly or through distributors or jobbers, the said products which they dehydrate and process, from their respective places of business to purchasers located in the various States of the United States other than the State of origin, and also into the District of Columbia, and during the time herein referred to, have carried on and engaged in, and do

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now carry on and engage in, commerce, as the term "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents Basic Vegetable Products, Inc., and Gentry, Incorporated, are two of the principal dehydrators and processors of onions and garlic in the United States, and said respondents occupy positions of dominance in the onion and garlic dehydrating and processing industry.

Respondents Puccinelli Packing Company and J. R. Simplot Company are important factors in the dehydrating and processing of onions.

When the production of dehydrated or processed onions, and the sales volume thereof, of all four respondents are taken into account and considered together, the aggregate is such that all four respondents have the power to control, and as a result of the acts, practices, methods and policies hereinafter set forth, have exercised actual control of the market prices of the onion products referred to in Paragraph 2 herein.

When the production of dehydrated or processed garlic, and the sales volume thereof, of respondents Basic Vegetable Products, Inc., and Gentry, Incorporated, are taken into account and considered together, the aggregate is such that these two respondents have the power to control, and as a result of the acts, practices, methods and policies hereinafter set forth, have exercised actual control of the market prices of the garlic products referred to in Paragraph 2 herein.

The production of dehydrated onion flakes exceeds, or in the past has exceeded, by four to five times the national consumption thereof, and this situation has created a pricing problem which has resulted in advice being disseminated among the said four respondents not to cut prices below the going market prices for said product.

PAR. 5. In the course and conduct of their selling, offering for sale, and shipping in commerce said dehydrated and processed products referred to in Paragraph 2 herein, respondents, except for the agreement and understanding hereinafter alleged and the restraints resulting therefrom, would have been in the past and would be now in competition with each other.

PAR. 6. For more than five years last past respondents have been and are engaged in unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have acted, and are still acting unlawfully to thwart, frustrate, hinder, suppress, and prevent competition by cooperating, combining, conspiring, agreeing, and entering into and carrying out an understanding and planned common course of action between and among themselves and others with respect to prices,

discounts, terms and conditions of sale, and other pricing practices, in connection with the offering for sale, sale and distribution in commerce of the products referred to in Paragraph 2 herein.

PAR. 7. Pursuant to, in furtherance of, and in order to make effective the purposes and objectives of the aforesaid cooperation, combination, conspiracy, agreement, understanding and planned common course of action, respondents have formulated, adopted, performed and put into effect, among other things, the following acts, practices, methods and policies by virtue of the fact that some of the respondents have acted with respect to each of the particulars hereinafter set forth and by virtue of the further fact that each respondent participated in one or more of such overt acts and practices:

1. Exchanged and still do exchange information concerning prices, terms and conditions of sale, trade discounts and volume discounts, and made known and still do make known among respondents their bid quotations with respect thereto in connection with particular transactions.

2. Attempted to fix, stabilize and maintain uniform prices, and to a large extent have fixed, stabilized and maintained uniform prices.

3. Attempted to fix, stabilize and maintain uniform terms and conditions of sale, and to a large extent have fixed, stabilized, and maintained uniform terms and conditions of sale.

4. Attempted to fix, stabilize, and maintain uniform trade discounts and volume discounts and to a large extent have fixed, stabilized, and maintained uniform trade discounts and volume discounts.

5. Held both formal and informal conferences, meetings and visitations at which discussions took place concerning prices, terms and conditions of sale, trade discounts and volume discounts to be adopted by said respondents in selling the aforesaid products.

6. Entered into agreements and other arrangements for competing sellers to fix, stabilize, maintain, and make uniform resale prices, terms and conditions of said products, and stabilized, adopted, and maintained systems, plans, methods and policies of merchandising in effectuation of such resale price maintenance agreements.

PAR. 8. The combination, conspiracy and the agreements, understandings, acts, practices, pricing methods, systems, devices and policies as hereinbefore alleged are all and singularly unfair to the prejudice of the public and against public policy because of their dangerous tendency unduly to hinder competition and create monopoly, and because they have oppressively restricted the activities of competing sellers, including distributors and jobbers, and otherwise restrained competition in the sale in commerce of the products referred to in Paragraph 2 herein; constitute unfair methods of competition

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and unfair or deceptive acts or practices in commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 13, 1951, issued and subsequently served its complaint on the respondents named in the caption hereof, charging said respondents with the use of unfair methods of competition and unfair or deceptive acts or practices in commerce, in violation of section 5 of the Federal Trade Commission Act.

The respondents desiring that this proceeding be disposed of by the Consent Settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the Consent Settlement hereinafter set forth, and in lieu of the answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this Consent Settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 18, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Basic Vegetable Products, Inc., is a California corporation, incorporated June 11, 1945, and has its office and principal place of business at 315 Montgomery Street, San Francisco, California.

Respondent Gentry, Incorporated, is a California corporation, incorporated January 19, 1946, and has its office and principal place of business at 837 North Spring Street, Los Angeles, California.

Respondent Puccinelli Packing Company is a California corporation, incorporated May 1, 1946, and has its office and principal place of business in Turlock, California.

Respondent J. R. Simplot Company is an Idaho corporation, and has its office and principal place of business in the Continental Bank Building, Boise, Idaho. The office and principal place of business of said respondent was formerly in the Idaho National Bank Building, North 10th Street and West Idaho Street, Boise, Idaho.

PAR. 2. Respondents are and at all times referred to in the complaint were engaged in the dehydration and processing of either onions or garlic or both, which are packed, distributed, offered for sale, sold and shipped as onion powder, garlic powder, onion flakes, garlic flakes, and also onions and garlic in various and diverse other processed forms for use by food packers, processors, and others as seasoning or flavoring agents.

PAR. 3. Respondents, in the regular course and conduct of their business, sell and ship, or cause to be sold and shipped either directly or through distributors or jobbers, the said products which they dehydrate and process, from their respective places of business to purchasers located in the various States of the United States other than the State of origin, and also into the District of Columbia, and during the time herein referred to, have carried on and engaged in, and do now carry on and engage in, commerce, as the term "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents Basic Vegetable Products, Inc., and Gentry, Incorporated, are two of the principal dehydrators and processors of onions and garlic in the United States, and said respondents occupy positions of dominance in the onion and garlic dehydrating and processing industry.

Respondents Puccinelli Packing Company and J. R. Simplot Company are important factors in the dehydrating and processing of onions.

When the production of dehydrated or processed onions, and the sales volume thereof, of all four respondents are taken into account

and considered together, the aggregate is such that all four respondents have the power to control, and as a result of the acts, practices, methods and policies hereinafter found and set forth, have exercised actual control of the market prices of the onion products referred to in Paragraph 2 herein.

When the production of dehydrated or processed garlic, and the sales volume thereof, of respondents Basic Vegetable Products, Inc., and Gentry, Incorporated, are taken into account and considered together, the aggregate is such that these two respondents have the power to control, and as a result of the acts, practices, methods and policies hereinafter found and set forth, have exercised actual control of the market prices of the garlic products referred to in Paragraph 2 herein.

The production of dehydrated onion flakes has exceeded the national consumption thereof, and this situation has created a pricing problem which has resulted in advice being disseminated among the said four respondents not to cut prices below the going market prices for said products.

PAR. 5. In the course and conduct of their selling, offering for sale, and shipping in commerce said dehydrated and processed products referred to in Paragraph 2 herein, respondents, except for the agreement and understanding hereinafter found and the restraints resulting therefrom, would have been in the past and would be now in competition with each other.

PAR. 6. For more than five years last past respondents have been and are engaged in unfair methods of competition and unfair acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they have acted, and are still acting unlawfully to thwart, frustrate, hinder, suppress, and prevent competition by cooperating, combining, conspiring, agreeing, and entering into and carrying out an understanding and planned common course of action between and among themselves and others with respect to prices, discounts, terms and conditions of sale, and other pricing practices, in connection with the offering for sale, sale and distribution in commerce of the products referred to in Paragraph 2 herein.

PAR. 7. Pursuant to, in furtherance of, and in order to make effective the purposes and objectives of the aforesaid cooperation, combination, conspiracy, agreement, understanding and planned common course of action, respondents have formulated, adopted, performed and put into effect, among other things, the following acts, practices, methods and policies by virtue of the fact that some of the respondents have acted with respect to each of the particulars hereinafter found

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and set forth and by virtue of the further fact that each respondent participated in one or more of such overt acts and practices:

1. Exchanged and still do exchange information concerning prices, terms and conditions of sale, trade discounts and volume discounts, and made known and still do make known among respondents their bid quotations with respect thereto in connection with particular transactions.

2. Attempted to fix, stabilize and maintain uniform prices, and to a large extent have fixed, stabilized and maintained uniform prices.

3. Attempted to fix, stabilize and maintain uniform terms and conditions of sale, and to a large extent have fixed, stabilized and maintained uniform terms and conditions of sale.

4. Attempted to fix, stabilize and maintain uniform trade discounts and volume discounts and to a large extent have fixed, stabilized and maintained uniform trade discounts and volume discounts.

5. Held both formal and informal conferences, meetings and visitations at which discussions took place concerning prices, terms and conditions of sale, trade discounts and volume discounts to be adopted by said respondents in selling the aforesaid products.

6. Entered into agreements and other arrangements for competing sellers to fix, stabilize, maintain, and make uniform resale prices, terms and conditions of sale of said products, and stabilized, adopted and maintained systems, plans, methods and policies of merchandising in effectuation of such resale price maintenance agreements.

PAR. 8. The combination, conspiracy and the agreements, understandings, acts, practices, pricing methods, systems, devices and policies as hereinbefore found are all and singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to hinder competition and create monopoly, and because they have oppressively restricted the activities of competing sellers, including distributors and jobbers, and otherwise restrained competition in the sale in commerce of the products referred to in Paragraph 2 herein; constitute unfair methods of competition and unfair or deceptive acts or practices in commerce within the meaning of section 5 of the Federal Trade Commission Act, as amended.

CONCLUSION

The acts and practices of respondents, as hereinabove found and set forth, are all to the prejudice of the public and constitute unfair methods of competition and unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

It is ordered, That respondents Basic Vegetable Products, Inc., Gentry, Incorporated, Puccinelli Packing Company and J. R. Simplot Company, corporations, their officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of dehydrated or processed onion powder, garlic powder, onion flakes or garlic flakes, or onions or garlic in any other processed forms, in interstate commerce, do forthwith cease and desist from doing, performing, continuing, cooperating, participating or engaging in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between any two or more of said respondents, or between any one or more of said respondents and another or others not parties hereto, to do or perform any of the following acts or practices:

1. Exchanging, distributing or relaying by any method or means information in any form as to prices, terms and conditions of sale, trade discounts or volume discounts where the purpose or effect thereof is to fix, stabilize, or maintain prices, terms and conditions of sale, trade discounts or volume discounts.
2. Fixing, establishing or maintaining prices.
3. Fixing, establishing or maintaining terms and conditions of sale.
4. Fixing, establishing or maintaining trade discounts or volume discounts.
5. Fixing, establishing or maintaining any arrangement for resale prices, terms or conditions of sale.
6. Exchanging, distributing or relaying among the respondents or any of them or through any medium or central agency information concerning prices charged particular customers or information concerning sales or shipments when the identity of the manufacturer, seller or purchaser can be determined or disclosed through such information and which has the purpose or effect of aiding in securing compliance with the prices, terms or conditions of sale as announced by anyone or more of the respondents.

It is further ordered, That the said respondents, separately or collectively, in connection with the offering for sale, sale and distribution of the said products, do forthwith cease and desist from doing, performing, continuing, participating or engaging in, or carrying out any agreement, arrangement, act or practice providing for the establishment or maintenance of resale prices on any commodity herein involved between themselves or between other producers or between wholesalers or between brokers or between factors or between retailers

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or between persons, firms, or corporations in competition with each other.

Provided, however, that nothing contained herein shall be construed to prohibit any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act.

It is further ordered, That the respondents shall, within sixty (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.

(sgd) Basic Vegetable Products, Inc.,
BASIC VEGETABLE PRODUCTS, INC.,

By (sgd) J. H. HUME,

Title: *Vice President.*

Date: 2/26/52.

(sgd) Gentry, Inc.,
GENTRY, INCORPORATED,

By (sgd) GEO. E. CLAUSEN,

Title: *President.*

Date: March 1, 1952.

(sgd) Puccinelli Packing Co.,
PUCCINELLI PACKING COMPANY,

By (sgd) R. L. PUCCINELLI,

Title: *President.*

Date: 2/28/1952.

(sgd) J. R. Simplot Company,
J. R. SIMPLOT COMPANY,

By (sgd) ROBERT I. TROXELL,

Title: *Executive Vice President.*

Date: March 3, 1952.

The foregoing Consent Settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 18th day of March 1952.

IN THE MATTER OF
MOTOOL MACHINE COMPANY, INC. ET AL.

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

Docket 5896. Complaint, June 27, 1951—Decision, Mar. 20, 1952

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, not marked or not adequately marked showing that they are of foreign origin, or if foreign markings are covered or otherwise concealed, such public understands and believes the articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products, including sewing machine heads, originating in the United States, over products originating in whole or in part in foreign countries.

Where two corporations with a common address, and their two responsible officers and an employee, engaged in the competitive interstate sale and distribution of sewing machine heads imported from Japan, and of complete sewing machines of which said heads were a part, in process of completing which by attachment of a motor the words "Made in Occupied Japan" or "Japan" were covered and no longer visible—

- (a) Failed adequately to disclose on said heads upon the front of some of which there appeared a medallion bearing in small and indistinct words the legend "Made in Occupied Japan" or "Japan" that said products were there made, with the result of placing in the hands of dealers a means to deceive the purchasing public as to their place of origin;
- (b) Falsely represented, through adoption and use of the word "American" as a trade or brand name for said machine heads, and the stamping or printing thereof on the front horizontal arm of the head in large and conspicuous letters, that said products were made in the United States;

With tendency and capacity to lead members of the purchasing public into the erroneous belief that their said products were of domestic origin, and thereby into the purchase of quantities of sewing machines of which said heads were a part, because of such mistaken belief; whereby substantial trade in commerce was unfairly diverted to them from their competitors and substantial injury done to competition in commerce:

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

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. William L. Taggart for the Commission.

Mr. David Lench, of New York City, for respondents.