

Complaint

IN THE MATTER OF

WESTERN GRAIN COMPANY

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDERS IN REGARD TO THE
ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS
APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 6039. Complaint, Sept. 4, 1952—Decision, Jan. 27, 1953

Where a corporation constituting the second largest miller of corn meals in the United States and the largest in the South, engaged in milling corn into various products, including corn meal, grits, corn flour, and hominy feeds for animals, and in manufacturing approximately twenty-five varieties of commercial feeds for animals, and in the competitive interstate sale of its said products to large retail grocers and chains for resale to consumers, and to wholesale grocers generally, who resold to the remaining larger number of smaller retail grocers, and each of whom included among common customers a substantial number of such retailers—

Without following any systematic ratio of price discrimination, discriminated in price between its purchasers, many of whom were competitively engaged in the resale of its products with other customers who purchased the same from it and were not so favored, within the various trading areas in which said favored customers were engaged in business;

Effect of which discriminatory pricing practices might be substantially to lessen competition and tend to create a monopoly in the lines of commerce in which it and its purchasers were engaged, and to injure, destroy or prevent competition with it or with its purchasers who received the benefits of such discrimination:

Held, That such acts and practices, under the circumstances set forth, constituted violation of Section 2 (a) of the Clayton Act, as amended.

Before *Mr. William L. Pack*, hearing examiner.

Mr. James I. Rooney, *Mr. James S. Kelaher* and *Mr. Brockman Horne* for the Commission.

Mr. Raoul Berger, of Washington, D. C., and *Mr. J. P. Mudd*, of Birmingham, Ala., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13), hereby issues its complaint against the said respondent, stating its charges as follows:

Complaint

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PARAGRAPH 1. Respondent Western Grain Company, hereinafter referred to as Western, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama. Its principal office and place of business is located at 1700 Tenth Avenue North, Birmingham, Alabama.

PAR. 2. Western is the second largest miller of corn meal in the United States, and is the largest in that area generally known as the South, its corn mill, located at Birmingham, Alabama, having a daily capacity of between 8,000 and 10,000 bushels of corn. Western is now, and continuously for many years last past has been, engaged in the business of milling corn into various products including corn meal, grits, corn flour, and hominy feed for animals, and in manufacturing from grain, grain products, and other products approximately 25 varieties of commercial (or mixed) feeds for animals; and of offering to sell and selling such products to purchasers located in that portion of the United States generally lying south of the States of Kentucky and Virginia and east of the Mississippi River, but including Louisiana, for use, consumption and resale within the United States.

In the course and conduct of said business, Western causes said products to be transported from its milling and manufacturing plants to said purchasers in a continuous current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. Western offers to sell and sells its products to large retail grocers (including chain store organizations) for resale to consumers for home consumption, and to wholesale grocers generally for resale to the remaining larger number of smaller retail grocers for like resale and consumption. Each of substantially all of such wholesale grocers resells or offers to resell the products purchased by it to a substantial number of the same retail grocers as one or more of the other of such wholesale grocers.

In the course and conduct of its business as aforesaid, Western is now, and during the times herein mentioned, has been in substantial competition with other corporations and firms engaged in the business of selling grain products.

PAR. 4. In the course and conduct of its business as aforesaid, Western, in the five years last past, has been and now is discriminating in price between different purchasers of its products of like grade and quality by selling said products to some of its purchasers at substantially higher prices than it sells said products to others of its purchasers.

Western follows no systematic ratio of price discrimination between its purchasers. Typical of the discriminations are those resulting from the sale of corn meal, which is one of Western's major

products. For example, purchasers located in the State of Alabama are charged substantially higher prices for corn meal than purchasers located in the States of Mississippi and Tennessee, who are charged varying lower prices; and some purchasers located within the State of Mississippi are charged substantially higher prices than other purchasers located in said State.

For purposes of illustration, there are set out below prices on Jim Dandy corn meal, basis 100-pound sacks, charged purchasers located in the designated towns and cities during various periods in 1950:

Period	Tuscaloosa, Ala.	Columbus, Miss.	Memphis, Tenn.
Apr. 1-Apr. 7.....	\$4.73	\$3.80	-----
Apr. 29-June 15.....	5.03	-----	\$4.10
June 16-June 23.....	5.53	4.55	-----
Aug. 19-Sept. 8.....	6.13	5.32½	-----
Sept. 9-Sept. 15.....	6.05	5.57½	5.20
Sept. 16-Oct. 6.....	6.45	4.57½	5.10

Period	Meridian, Miss.	Forest, Miss.
July 15-July 20.....	\$6.80	\$6.20
Aug. 18-Sept. 12.....	6.05	5.32½
Dec. 21-Dec. 31.....	5.15	4.32½

Many of the favored customers receiving the benefits of the afore-said discriminations in price are competitively engaged in the resale of said products with other customers who purchase said products from respondent and who are not so favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 5. The effect of said discriminatory pricing practices as above alleged may be substantially to lessen competition and tend to create a monopoly in the lines of commerce in which respondent Western and its purchasers are engaged; to injure, destroy or prevent competition with respondent Western or with its purchasers who receive the benefits of such discriminations.

PAR. 6. The foregoing alleged acts and practices of respondent Western, as set forth herein, constitute violations of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13).

CONSENT SETTLEMENT ¹

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monop-

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 January 27, 1953, and ordered entered

Findings

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lies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936, (the Robinson-Patman Act), the Federal Trade Commission on September 4, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging it with violation of subsection (a) of Section 2 of said Clayton Act as amended.

The respondent, 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 purposes 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 answer to said complaint, hereby:

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

2. Consents 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 respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law.

3. Agrees 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 respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Western Grain Company, hereinafter referred to as Western, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama. Its principal office and place of business is located at 1700 Tenth Avenue North, Birmingham, Alabama.

PAR. 2. (a) Western is the second largest miller of corn meal in the United States, and is the largest in that area generally known as the

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.

South, its corn mill, located at Birmingham, Alabama, having a daily capacity of between 8,000 and 10,000 bushels of corn. Western is now, and continuously for many years last past has been, engaged in the business of milling corn into various products including corn meal, grits, corn flour, and hominy feed for animals, and in manufacturing from grain, grain products, and other products approximately 25 varieties of commercial (or mixed) feeds for animals; and of offering to sell and selling such products to purchasers located in that portion of the United States generally lying south of the States of Kentucky and Virginia and east of the Mississippi River, but including Louisiana, for use, consumption and resale within the United States.

(b) In the course and conduct of said business, Western causes said products to be transported from its milling and manufacturing plants to said purchasers in a continuous current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. (a) Western offers to sell and sells its product to large retail grocers (including chain store organizations) for resale to consumers for home consumption, and to wholesale grocers generally for resale to the remaining larger number of smaller retail grocers for like resale and consumption. Each of substantially all of such wholesale grocers resells or offers to resell the products purchased by it to a substantial number of the same retail grocers as one or more of the other of such wholesale grocers.

(b) In the course and conduct of its business as aforesaid, Western is now, and during the times herein mentioned, has been in substantial competition with other corporations and firms engaged in the business of selling grain products.

PAR. 4. (a) In the course and conduct of its business as aforesaid, Western, in the five years last past, has been and now is discriminating in price between different purchasers of its products of like grade and quality by selling said products to some of its purchasers at substantially higher prices than it sells said products to others of its purchasers.

(b) Western follows no systematic ratio of price discrimination between its purchasers. Typical of the discriminations are those resulting from the sale of corn meal, which is one of Western's major products. For example, purchasers located in the State of Alabama are charged substantially higher prices for corn meal than purchasers located in the States of Mississippi and Tennessee, who are charged varying lower prices; and some purchasers located within the State of Mississippi are charged substantially higher prices than other purchasers located in said State.

Order

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(c) For purposes of illustration, there are set out below prices on Jim Dandy corn meal, basis 100# sacks, charged purchasers located in the designated towns and cities during various periods in 1950:

Period	Tuscaloosa, Ala.	Columbus, Miss.	Memphis, Tenn.
Apr. 1-Apr. 7.....	\$4.73	\$3.80	-----
Apr. 29-June 15.....	5.03	-----	\$4.10
June 16-June 23.....	5.53	4.55	-----
Aug. 19-Sept. 8.....	6.13	5.32½	-----
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Period	Meridian, Miss.	Forest, Miss.
July 15-July 20.....	\$6.80	\$6.20
Aug. 18-Sept. 12.....	6.05	5.32½
Dec. 21-Dec. 31.....	5.15	4.32½

(d) Many of the favored customers receiving the benefits of the aforesaid discriminations in price are competitively engaged in the resale of said products with other customers who purchase said products from respondent and who are not so favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 5. The effect of said discriminatory pricing practices as above set out may be substantially to lessen competition and tend to create a monopoly in the lines of commerce in which respondent Western and its purchasers are engaged; or to injure, destroy or prevent competition with respondent Western or with its purchasers who receive the benefits of such discriminations.

CONCLUSION

The foregoing acts and practices of respondents constitute violations of subsection (a) of Section 2 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), as amended by an Act of Congress approved June 19, 1936 (The Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been disposed of by the consent settlement procedure as set out in Rule V of the Commission's Rules of Practice, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of subsection (a) of Section 2 of the Clayton Act, as amended,

It is ordered, That respondent, Western Grain Company, a corporation, and its officers, representatives, agents, and employees, in, or in connection with, the sale of grain products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from differentiating directly or indirectly in prices, terms or conditions of sale:

(1) By selling such products of like grade and quality to any purchaser at a higher price or on less favorable terms than those granted any other purchaser who in fact competes with said purchaser paying the higher price or receiving less favorable terms, in the resale and distribution of said products;

(2) By selling such products of like grade and quality to any purchaser at a higher price or on less favorable terms than to any other purchaser when selling to the latter in competition with any other seller.

It is further ordered, That the respondent shall, within sixty (60) days after the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

WESTERN GRAIN COMPANY

By B. McCall

Title, President

Date, 12/10/52

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 27th day of January, 1953.

IN THE MATTER OF

THE BROWN-CELL LABORATORIES, INC. ET AL.

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

Docket 5791. Complaint, June 28, 1950—Decision, Jan. 29, 1953

Where a corporation and five officers and directors thereof, engaged in the manufacture and interstate sale, lease, and distribution of their "Brown-Cell Matrix Disc" for use for plants and soil, made by combining two parts sand and one part cement with water containing a culture of organisms, which were to be immersed in from five to ten gallons of water for 24 hours or longer and the water then used as below set forth; in advertising their product through postcards, leaflets, circulars, mimeographed brochures, lease forms, labels and other media, including reproductions of statements of users—

- (a) Falsely represented that they employed agricultural experts to make recommendations for the use thereof;
- (b) Falsely represented that their said product used as directed was a soil and plant conditioner which produced organic matter useful to plants and soil, combatted poisons in the soil, and contributed to every need of plant life;
- (c) Falsely represented that soaking seeds before planting in the water thus produced would increase crop production;
- (d) Falsely represented that the product purified water and kept it free from all impurities;
- (e) Falsely represented that it eliminated weeds, destroyed all plant parasites, and eliminated the necessity for the use of insect sprays;
- (f) Falsely represented that it was a soil fertilizer which resulted in better quality and higher yield in crops, flowers, trees, and fruits; and
- (g) Falsely represented that it was of value in insuring healthy chickens, increasing the weight of chickens and ducks, reducing mortality of young chickens and ducks, and would substantially increase egg production;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true and with tendency and capacity so to do, and thereby induce its purchase or lease of their said product:

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

As respects the charges of the complaint that respondents also misrepresented that they owned, operated, and controlled a laboratory containing substantial equipment and apparatus for use in the study, experimentation and production by scientists and technicians employed for such purposes, and