

Complaint

IN THE MATTER OF

L. H. KELLOGG CHEMICAL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6287. Complaint, Jan. 17, 1955—Decision, July 28, 1955*

Consent order requiring sellers in Minneapolis, Minn., to cease representing falsely in advertising that they were manufacturing analytical chemists, operating laboratories in which they manufactured their embalming fluids, and representing falsely the unique character, bactericidal and germicidal potency, and blood-coagulating properties of their said fluids, and making other unfounded claims.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. Ames W. Williams for the Commission.

Sachs, Karlins, Grossman & Karlins, of Minneapolis, Minn., for respondents.

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 L. H. Kellogg Chemical Company, a corporation, and Leo A. Hodroff, William Hodroff and Ruth Abry, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions 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 L. H. Kellogg Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office located at 1401 3rd Avenue South, Minneapolis, Minnesota. Respondents Leo A. Hodroff, William Hodroff and Ruth Abry are president and treasurer, vice president and secretary, respectively, of said corporate respondent. These individuals formulate and direct the policies, acts, practices and business affairs of said corporate respondent, including the acts and practices hereinafter set out.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution, among other things, of embalming fluids, a line of which is designated as "Kelco Scientists Series Fluids." Respondents have caused and now cause their said embalming fluids, when sold, to be transported from the place of manufacture thereof in the State of Minnesota to purchasers

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in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said embalming fluids in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents are now, and have been, in substantial competition in commerce with other corporations and with firms, individuals and partnerships engaged in the sale and distribution of embalming fluids.

PAR. 4. In the course and conduct of their business, respondents have made numerous statements with respect to their Kelco Scientists Series Fluids and the price thereof; their facilities and other matters in connection with their business in various kinds of advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said fluids.

Among and typical, but not all inclusive of such statements, are the following:

The Kelco Laboratories are the finest and most complete maintained by any manufacturer devoted to the profession. Thousands of dollars have been spent to equip and furnish our chemists with the newest and most complete compounding and analytical instruments that are known to science. (In connection with the aforesaid statement there appear pictures of laboratory facilities and men who appear to be chemists at work.)

The FIRST complete line of fluid formulations ever developed and tested as a series to insure perfect integration and true 'living balance' of all ingredients * * *.

The FIRST embalming fluids ever perfected in full cooperation with the nation's foremost primary chemical producers * * *.

The FIRST series of completely new embalming fluids ever planned and produced on the basis of exhaustive modern scientific research methods * * *.

The FIRST series of formulations ever tested in complete sequence and proven superior in repeated case examinations by impartial embalmers and recorded in available case reports.

KB-500—the most powerful bactericide yet developed for embalming use—more than 500 times greater bactericidal effectiveness than phenol (carbolic acid) against all pathogenic organisms * * *.

KB-500 maintains bactericidal potency almost indefinitely * * *.

Contamination or chemical neutralization, which sharply reduces the effectiveness of almost all other germicides, has virtually no effect on KB-500.

Thrombex-Heparin—an amazing new synthesis of medically proven Heparin anti-coagulant and Thrombex clot-dispersant, that instantly stops and prevents all blood coagulation—quickly and safely disperses even the most stubborn clots.

Lanomulsion—the first and only embalming oil-emulsion scientifically tested for real effectiveness * * *.

You are assured of the Finest Quality Ingredients. Even more important than quantity is quality—whenever Kelco buys. Our laboratory specifications

for chemicals are extremely demanding—so strict, in fact, that only two chemical producers in the nation are able to meet our requirements for the exacting quality of formaldehyde used as the basic ingredient in certain Kelco fluids.

Distribution Method No. 1 Manufacturer's salesmen get 40% of your cost. The Kelco Way you get the 40% for yourself.

PAR. 6. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly and by implication, that they own and operate the laboratory depicted and that the persons at work therein are chemists employed by them; that their Kelco Scientists Series Fluids are the first line ever developed and tested as a series; that such fluids are the first ever perfected in cooperation with primary chemical producers; that such fluids are the first to be produced as a result of scientific research; that such fluids are the first series of formulations to be tested in sequence by impartial embalmers and recorded in available case reports; that the KB-500 contained in their said fluids has more than 500 times greater bactericidal effectiveness than phenol; that KB-500 maintains its bactericidal and germicidal potency despite contamination and chemical neutralization; that the ingredient Thrombex-Heparin contained in their said fluids stops and prevents all blood coagulation and quickly disperses blood clots and that the ingredient Lanomulsion contained in their fluids is the first and only oil-emulsion of proven value in embalming fluids; that respondents' specifications for formaldehyde are so exacting that only two chemical producers in the nation are able to meet them and that purchasers of respondents' fluids are afforded savings of 40% from the prices charged by their competitors for similar products.

PAR. 7. Respondents on their business stationery and in various advertising media use the expression "Manufacturing Analytical Chemists" and in advertising media the words "Factories, 110 North Fifth Street, 126 East Franklin Avenue." Respondents thereby represent that they manufacture the products sold by them in factories owned by them.

PAR. 8. A substantial portion of those buying embalming fluids prefer to purchase direct from the manufacturer, believing that advantages in price and other respects are thereby obtained.

PAR. 9. The foregoing representations, implications and depictions are false, misleading and deceptive. In truth and in fact, the laboratory facilities depicted are not those of respondents and the scientists are not employed by respondents. Respondents' Kelco Scientists Series Fluids are not the first line to be developed and tested as a series. Such fluids are not the first to be perfected in cooperation with primary

chemical producers. Such fluids are not the first produced as a result of scientific research. The fluids are not the first series of formulations tested in sequence by impartial embalmers and recorded in available case reports. The bactericidal potency of KB-500 in respondents' fluids is substantially less than 500 times that of phenol; its germicidal and bactericidal potency is reduced by contamination and chemical neutralization and will not last indefinitely. The Thrombex-Heparin as contained in respondents' fluids will not stop or prevent blood coagulation nor will it disperse blood clots and Lanomulsion is not the first or only effective embalming oil-emulsion of proven value in embalming fluids.

The respondents are not manufacturing analytical chemists nor do they own or control a factory or factories in which their fluids are manufactured. They employ only one chemist upon a part-time basis. Respondents' specifications for formaldehyde are capable of being met by many producers of such ingredient and purchasers of their fluids are not afforded savings of 40% from the prices charged by their competitors for similar products.

PAR. 10. The use by the respondents of the aforesaid statements, representations and implications in connection with the offering for sale and sale of their embalming fluids in commerce has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and implications were and are true, and to induce the public to purchase substantial quantities of respondents' products as a result of such erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done thereby to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents L. H. Kellogg Chemical Company, an Illinois corporation located at 1401 Third Avenue, South, Minneapolis, Minnesota, and Leo A. Hodroff, William Hodroff and Ruth Abry, individually and as officers of said corporation, with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the

provisions of the Federal Trade Commission Act, in connection with the sale and distribution of embalming fluids designated as "Kelco Scientists Series Fluids."

Subsequent to the filing of their answers, the respondents William Hodroff and Ruth Abry filed their separate affidavits to the effect that William Hodroff had resigned as officer, director and employee of said corporation in February 1951 and had assumed employment with Kelco Funeral Supply Company, and that Ruth Abry, although Secretary of said corporate respondent, had not participated in the affairs of the corporation other than calling the annual meetings of shareholders and keeping the minutes thereof and keeping minutes of the meetings of the Board of Directors.

After the issuance of said complaint and the filing of their answers thereto, the respondents L. H. Kellogg Chemical Company and Leo A. Hodroff, individually, entered into a stipulation for a consent order with counsel for complaint disposing of all the issues in this proceeding, which stipulation was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said stipulation that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said stipulation, the said respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said stipulation, the answers heretofore filed by respondents were withdrawn and the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said stipulation, respondents further agreed that the order to cease and desist, issued in accordance with said stipulation, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said stipulation, together with the complaint and the affidavits filed in behalf of Ruth Abry and William Hodroff dated March 24, 1955, shall constitute the entire record herein,

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that the complaint herein may be used in construing the terms of the order issued pursuant to said stipulation, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

It was further stipulated and agreed between counsel for the respondents and counsel supporting the complaint that in view of the information contained in the affidavits submitted concerning the status of William Hodroff and Ruth Abry, individually cited in the complaint, counsel supporting the complaint by said stipulation recommended dismissal of the charges as to such individuals.

The hearing examiner has considered such stipulation and the order therein contained, and the affidavits filed herein, and it appearing that said stipulation and order provides for appropriate disposition of this proceeding, the same is hereby accepted and made a part of the record and in consonance with the terms of said stipulation, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That L. H. Kellogg Chemical Company, a corporation, and Leo A. Hodroff, individually, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of their embalming fluids designated as Kelco Scientists Series Fluids or any other embalming fluids of substantially similar composition or possessing substantially similar properties, whether sold under the same or under any other name, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) Through the use of pictorial representations or otherwise, that they own or control a laboratory or laboratories that they do not actually own or control or that they employ scientists which they do not actually employ.

(b) That their line of embalming fluids is the first complete line developed and tested as a series.

(c) That such embalming fluids are the first perfected in cooperation with primary chemical producers.

(d) That such fluids are the first produced as a result of scientific research methods.

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(e) That such fluids are the first series of formulations tested in sequence by undertakers and recorded in available case reports.

(f) That the KB-500 contained in their fluids is any number of times more effective than phenol than is actually the fact.

(g) That the KB-500 contained in their fluids maintains its germicidal or bactericidal potency for any period of time that is not in accordance with the facts.

(h) That the Thrombex-Heparin contained in their fluids will stop or prevent coagulation or disperse blood clots.

(i) That Lanomulsion is the first or only oil-emulsion of proven value in embalming fluids.

(j) That their specifications for chemicals are so exacting that only two producers can comply therewith or misrepresent in any manner the quality of the ingredients in their fluids.

(k) That purchasers of their products are afforded savings from the prices charged by their competitors which are not in accordance with the facts.

2. Using the words "Manufacturing Analytical Chemists" or any of them, or the word "Factories," or any other word or words of similar import or meaning, on their business stationery or in advertisements; or representing through any other means or device, or in any manner, that they manufacture the fluids sold by them.

Provided, however, That nothing herein shall preclude the respondents from representing that the fluids which they sell are manufactured under their supervision, from their ingredients and in accordance with their formulas.

It is further ordered, That the complaint be dismissed as to respondents William Hodroff and Ruth Abry.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of July, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents L. H. Kellogg Chemical Company, a corporation, and Leo A. Hodroff, individually, 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 the order to cease and desist.

IN THE MATTER OF

SUNSHINE BISCUITS, INC., STATLER MANUFACTURERS
CORP., STATLER DISTRIBUTORS, INC., AND LAW-
RENCE S. REISS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2
(a) OF THE CLAYTON ACT AND OF THE FEDERAL TRADE COMMISSION ACT

Docket 6191. Complaint, Mar. 11, 1954—Decision, July 30, 1955

Consent order requiring the second largest producer of packaged bakery products to cease discriminating in price in violation of sec. 2 (a) of the Robinson-Patman Act, through selling its products to some customers at higher prices than to their competitors by means of a volume discount plan based on the monthly purchases of the particular customer, as charged in Count I of the Commission's complaint.¹

Before *Mr. John Lewis*, hearing examiner.

Mr. William H. Smith and *Mr. Brockman Horne* for the Commission.

Mr. A. W. DeBirny, of Long Island City, N. Y., and *Mr. Robert E. Freer*, of Washington, D. C., for Sunshine Biscuits, Inc.

Mr. Avel B. Silverman, of New York City, for Statler Manufacturers Corp., Statler Distributors, Inc. and Lawrence S. Reiss.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sunshine Biscuits, Inc., hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and pursuant also to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Commission, having reason to believe that said Sunshine Biscuits, Inc., Statler Manufacturers Corp., a corporation, Statler Distributors, Inc., a corporation, and hereinafter more particularly designated and described, and Lawrence S. Reiss, individually and as an officer of Statler Manufacturers Corp. and Statler Distributors, Inc., have violated the provisions of Section 5 of the said Act, and it appearing to the Commission that a proceeding by it in respect

¹ Count II of the complaint was settled on July 20, 1954, 51 F. T. C. 25, by a consent order forbidding exclusive-dealing arrangements under which said baking corporation and sellers of automatic vending machines agreed that the latter would dispense the former's baked goods exclusively through their machines.