

the hearing examiner be vacated and set aside.

It was further ordered, That the attached findings as to the facts, conclusions drawn therefrom, and order, be issued and served upon the respondent.

IN THE MATTER OF

J. R. PRENTICE DOING BUSINESS AS
AMERICAN BREEDERS SERVICE ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket 7450. Complaint, Mar. 18, 1959—Decision, Apr. 18, 1960

Consent order requiring a major supplier of bull semen used in artificially inseminating dairy cows, to cease providing by contract, etc., that technicians employed by him refrain from working for themselves or a competitor in a bull semen business for a longer period than permitted by the law of the State involved or for longer than one year after terminating employment with him.

Before *Mr. Walter R. Johnson*, hearing examiner.

Mr. Lynn C. Paulson for the Commission.

Sidley, Austin, Burgess & Smith, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that J. R. Prentice, individually and doing business as American Breeders Service, Ozark Proved Sire Service Com-

pany, a corporation, and Don L. Hoyt, individually and as president of Ozark Proved Sire Service Company, hereinafter referred to as respondents, have violated the provisions of Section 3 of said Act (15 U.S.C.A. Sec. 14), and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission having reason to believe that said respondents have violated the provisions of Section 5 of said Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges as follows:

COUNT I

PARAGRAPH 1. (a) : Respondent J. R. Prentice is an individual and is now and has for a number of years last past been trading and doing business as American Breeders Service. Respondent's principal place of business and address is at 325 N. Wells Street, Chicago, Illinois.

(b) Respondent Ozark Proved Sire Service Company is a corporation, organized and doing business under and by virtue of the laws of the State of Arkansas, with its home office and principal place of business located at Springdale, Arkansas.

(c) Respondent Don L. Hoyt is an individual and president of the respondent Ozark Proved Sire Service Company. Respondent does now, and has since its organization directed and controlled the policies, acts and practices of the respondent Ozark Proved Sire Service Company. Respondent's address is the same as that of the corporate respondent.

PAR. 2. Respondent J. R. Prentice, hereinafter referred to as respondent American Breeders Service, is now and has been for a number of years last past engaged in the business of processing and in the sale and distribution of bull semen used in the artificial insemination of dairy cows. Respondent operates in 43 states of the United States and in several foreign countries and is the largest operator in the breeding service business in the United States. Respondent sells bull semen at wholesale and retail. Sales are made through contracts between respondent and the purchasers, some of whom are referred to as distributors, some as dealers, some as independent contractors and others as technician employees.

Respondent Ozark Proved Sire Service Company is one of the respondent American Breeders Service's distributors and has contracted with respondent American Breeders Service not to use any semen for the artificial insemination of dairy cattle other than

Complaint

56 F.T.C.

semen supplied by respondent American Breeders Service. Respondent Ozark Proved Sire Service Company in turn, under the supervision of respondent American Breeders Service, enters into contracts with technicians whom it designates as purchasers. One of the terms of said contracts is that the purchaser will not use any semen in the insemination of dairy cows except the semen supplied by respondent Ozark Proved Sire Service Company. By agreement between the respondents and the technician purchasers shipments of said semen is made direct from the respondent American Breeders Service's place of business to the technician purchasers. Thus when sales are made respondents ship and/or cause said semen to be shipped and transported across state lines to the purchasers thereof, many of whom are located in states of the United States, other than the state of origin of said shipments. Respondents do now and have for more than two years last past maintained a constant current of trade in said product in commerce between and among the various states of the United States.

PAR. 3. In the course and conduct of their business as herein described respondents have been, during all the time herein mentioned, in substantial competition with other corporations, persons, firms and partnerships in the sale and distribution of bull semen in commerce between and among the various states of the United States.

PAR. 4. In the course and conduct of their business as herein described the respondents have made sales and contracts for sale and are still making sales and contracts for sale of bull semen on the conditions, agreements and understandings that the purchasers thereof shall not use or purchase bull semen from a competitor or competitors of respondents.

PAR. 5. The effect of said conditions, agreements, and understandings may be to substantially lessen competition, or tend to create a monopoly in respondents in the sale and distribution in commerce of such said product.

PAR. 6. The aforesaid acts of said respondents 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

PARAGRAPH 1. For part of its charges under this Count the Commission relies upon all the matters and things set out in paragraphs 1 through 4 of Count I of this complaint, and adopts the things

therein alleged to the same extent as if said paragraphs were set out verbatim herein and said paragraphs 1 through 4 of said Count I is incorporated herein by reference and made a part of the allegations of this Count.

PAR. 2. It is further alleged that in the sale and offering for sale of its products the respondent American Breeders Service requires the purchaser, whether such purchaser be a distributor, dealer, independent contractor or technician employee to enter into a contract with respondent involving both the rights of termination of such contract and the consequences to the future business activities of the purchasers whose contracts are terminated. Thus the contract specifies:

- (1) The territory in which the purchaser will operate;
- (2) That during the term of the contract the purchaser will not inseminate any cows with semen other than semen supplied by American Breeders Service;
- (3) That the contract can be terminated at the will of either party on 30 days' notice;
- (4) That the purchaser will not inseminate cows with semen other than semen supplied by American Breeders Service for a period of two years after the termination of said contract; and
- (5) Upon termination of the contract the purchaser will deliver to respondent all customer lists and records.

The respondent Ozark Proved Sire Service Company, as a distributor, pursuant to its agreement with respondent, American Breeders Service enters into contracts with technician purchasers which contracts specify.

- (1) The territory in which the purchaser will operate;
- (2) That during the term of contract the purchaser will not inseminate any cows with semen other than semen supplied by respondent.
- (3) That the contract can be terminated upon 30 days' notice;
- (4) That the purchaser will not inseminate cows with semen other than semen supplied by American Breeders Service for a period of two years after the termination of said contract; and
- (5) Upon termination of the contract the purchaser will deliver to respondent all customer lists and records.

The provisions of the contracts the respondent American Breeders Service has with its distributors, dealers, independent contractors, technicians and the other customers give to the respondent the power to arbitrarily terminate such contracts and therefore tend to make such distributors, dealers, independent contractors and technician purchasers subservient to respondent's wishes and will as to

the conduct of their business. The contract which the respondent Ozark Proved Sire Service Company has with its technician purchasers gives to said respondents the power to arbitrarily terminate such contracts and deprive technician purchasers of products with which to carry on their business, and make said technician purchasers subservient to the wishes and will of said respondents in the conduct of their business.

In addition to the oppressive restrictions placed upon the purchasers by the provisions of said contracts, the respondents have threatened to sue technician purchasers should such purchasers violate any of the provisions of said contracts, or if any such purchaser should inseminate cows with semen other than that supplied by respondents during a period of two years after the termination of such contracts. The respondents have, in fact, sued technician purchasers who after the termination of the contracts engaged in the business of inseminating cows with semen which they obtained from sources other than the American Breeders Service. Thus under the oppressive provisions of said contracts and the acts of the respondents in enforcing the provisions thereof, the respondents have the power to arbitrarily put a purchaser out of business and prevent such purchaser from engaging or continuing in the business of inseminating cows and of purchasing semen for the purpose of inseminating cows from respondents' competitors.

PAR. 3. The acts and practices of respondents as herein alleged are all to the injury and prejudice of competitors of the respondents and of customers and prospective purchasers of respondents and of the public, and have a tendency and effect of obstructing, hindering and preventing competition in the sale and distribution of bull semen in commerce within the intent and meaning of the Federal Trade Commission Act; have a tendency to and have obstructed, restricted and restrained such commerce in such product and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Federal Trade Commission issued its complaint against the above-named respondents on March 18, 1959, charging them in Count I with making and having made sales and contracts for sale of bull semen on the condition, agreement and understanding that the purchasers thereof should not use or purchase bull semen from

a competitor or competitors of respondent, in violation of Section 3 of the Clayton Act, and, in Count II, with the use of unfair methods of competition in commerce in the distribution and sale of bull semen in violation of the provisions of the Federal Trade Commission Act. On February 12, 1960, after the filing of respondents' answer, there was submitted to the hearing examiner an agreement containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement has been signed by respondent J. R. Prentice, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director and Associate Director of the Commission's Bureau of Litigation. The hearing examiner, by his notice of February 29, 1960, having rejected the agreement, the matter is now before the Commission for its consideration.

The agreement provides for dismissal of the complaint as to corporate respondent Ozark Proved Sire Service Company and respondent Don L. Hoyt. As to respondent J. R. Prentice, the agreement contains a consent order to cease and desist disposing of one of the charges in Count II of the complaint and provides for dismissal of the remaining charges in Count II and dismissal of Count I. Pursuant to the agreement, respondent J. R. Prentice has 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. The agreement further provides that respondent waives all further procedural steps before the hearing examiner and the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or to contest the validity of the order to cease and desist entered in accordance with this agreement. Further, the agreement asserts that it is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint. Respondent additionally has agreed that the order to cease and desist contained in the agreement may be entered in this proceeding without further notice to respondent and that, when so entered, it shall have the same force and effect as if entered after a full hearing, and that it may be altered, modified or set aside in the manner provided by statute for other orders, and that the complaint may be used in construing the terms of the order.

For the reasons assigned in its accompanying opinion, the Commission has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate dis-

position of this proceeding in the public interest, and the same is hereby accepted and order filed.

Having determined that this proceeding is in the public interest, the Commission hereby makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent, J. R. Prentice, is an individual doing business as American Breeders Service, with his office and principal place of business located at 325 N. Wells Street, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of this respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent J. R. Prentice, directly or indirectly, in the course and conduct of a bull semen business conducted under the American Breeders Service, or any other name, do forthwith cease and desist from providing by contract, agreement, or understanding that technicians employed by him shall refrain from working for themselves or a competitor in a bull semen business for a period longer than permitted by the law of the State involved and in no event for a period in excess of one year after termination of their employment with him.

It is further ordered, That the complaint herein is dismissed as to respondents Don L. Hoyt and Ozark Proved Sire Service Company.

It is further ordered, That Count I of the complaint herein is dismissed.

It is further ordered, That Count II of the complaint herein is dismissed as to J. R. Prentice except for that portion thereof concerning the employment of technicians which is provided for in this order.

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

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

On February 12, 1960, prior to hearings in this matter, there was submitted to the hearing examiner an agreement for consent order

in disposition of all the issues presented in this proceeding. This agreement was rejected by the hearing examiner. The matter is now before us on joint appeal of counsel supporting the complaint and counsel for respondent J. R. Prentice, from that ruling as permitted by §3.25 of the Commission's Rules of Practice.

The agreement contains an order dismissing both counts of the complaint as to respondent Ozark Proved Sire Service Company and respondent Don L. Hoyt. It provides for dismissal of both counts as to respondent J. R. Prentice except for one practice charged under Count II, which practice is the subject of a consent order to cease and desist. The reasons for these actions are set forth in the agreement. The hearing examiner stated as the reason for his rejection of the agreement that, in his opinion, "the agreement and proposed order does not properly dispose of the matters set forth in the complaint."

We have considered the joint appeal of counsel and have carefully reviewed the agreement. In our view, the grounds set forth in the agreement are sufficient, on their face, to support the proposed actions. Furthermore, all of the issues raised in the complaint are covered by the agreement. There is no basis on the information before us to question the terms of the agreement and no reasons have been advanced by the hearing examiner as a basis for his belief. Accordingly, we must conclude that the agreement constitutes appropriate disposition of the issues in this case and we direct its acceptance and the entry of an appropriate decision in this proceeding.

IN THE MATTER OF

AMERICAN DEB FURS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL