

MANUFACTURING CHEMISTS' ASSOCIATION, INC., ET AL.

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

Docket C-284. Complaint, Dec. 19, 1962—Decision, Dec. 19, 1962

Consent order requiring eight manufacturers of trisodium phosphate (TSP) and their trade association to cease conspiring to hinder competition by, among other things, fixing and maintaining noncompetitive or rigid prices for TSP; fixing prices and terms of sale through common use of a multiple basing point or other system equalizing prices without regard to

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shipping cost, using standard containers for TSP or identical differentials for sale therein, using identical quantity differentials such as identical carload and truckload prices, or using uniform contracts with provisions for identical terms of sale; by maintaining a zone delivered pricing system; or by collecting and exchanging information concerning transportation charges or using any factor so collected in computing the price of TSP; and requiring them to review their prices and pricing systems on the basis of their individual costs, withdraw their presently effective prices, etc., and establish new prices individually determined.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C.A. Sec. 41, 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Manufacturing Chemists' Association, Inc., a corporation; Olin Mathieson Chemical Corporation, a corporation; Monsanto Chemical Company, a corporation; Allied Chemical Corporation, a corporation; The American Agricultural Chemical Company, a corporation; FMC Corporation, a corporation; Virginia-Carolina Chemical Corporation, a corporation; Hooker Chemical Corporation, a corporation; and Stauffer Chemical Company, a corporation, more particularly described and referred to hereinafter as respondents, have violated the provisions of 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 names the previously mentioned corporations, each and all as respondents herein, and issues its complaint against each of the named parties stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Manufacturing Chemists' Association, Inc., hereinafter sometimes referred to as respondent MCA, is an incorporated trade association organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at the Universal Building, Connecticut and Florida Avenues, Washington, D.C. Said trade association was originally organized in 1872 and incorporated under its present corporate title in 1949 under the laws of the State of New York.

Respondent Olin Mathieson Chemical Corporation is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 460 Park Avenue, New York 22, N.Y. In June 1955, Olin Mathieson Chemical Corporation acquired and merged Blockson Chemical Company.

Respondent Monsanto Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with its

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principal office and place of business located at 800 North Lindbergh Boulevard, St. Louis 66, Mo.

Respondent Allied Chemical Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 61 Broadway, New York 6, N.Y.

Respondent The American Agricultural Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 100 Church Street, New York 7, N.Y.

Respondent FMC Corporation, formerly operating under the name Food, Machinery and Chemical Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place for transacting the business of its Chemical Division located at 633 3rd Avenue, New York 17, N.Y.

Respondent Virginia-Carolina Chemical Corporation is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 401 East Main Street, Richmond, Va.

Respondent Hooker Chemical Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 666 Fifth Avenue, New York 19, N.Y. In June 1958, Hooker Chemical Corporation acquired and merged Shea Chemical Corporation.

Respondent Stauffer Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 380 Madison Avenue, New York 17, N.Y. In November 1959, Stauffer Chemical Company acquired and merged Victor Chemical Works.

All of the respondents named herein, other than respondent MCA, are collectively referred to hereinafter as "respondent manufacturers".

PAR. 2. The respondent manufacturers, hereinbefore named and described, either directly or through operating divisions or subsidiaries, are engaged in the manufacture, sale and distribution, or the sale and distribution of trisodium phosphate, hereinafter referred to as TSP.

Each of the respondent manufacturers is engaged in the business of selling and distributing TSP to customers located in States other than the State in which each respondent respectively maintains production or processing facilities and in some instances to customers located outside the continental limits of the United States. There has been and is now a pattern and course of interstate commerce in said

TSP by respondents within the intent and meaning of the Federal Trade Commission Act. The amount of sales in commerce is substantial.

PAR. 3. The respondent manufacturers are in substantial competition with each other, and with others in the manufacture, sale, processing and distribution of TSP, except to the extent that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth.

PAR. 4. TSP is a chemical substance which is manufactured in three distinct forms: crystalline, anhydrous and monohydrate. The raw materials from which TSP is manufactured consists of phosphoric acid, soda ash and caustic soda. TSP has a number of industrial uses including the following:

- a. In alkaline cleaning compounds, particularly in industrial and home floor and wall cleaners;
- b. Water treatment and water treating compounds for precipitating water hardness and furnishing PO_4 ion in boilers where an alkalinity higher than DSP (Disodium Phosphate) is needed;
- c. In metal cleaning and metal working for removing oil and grease;
- d. In wool scouring;
- e. Dehairing hogs;
- f. In fruit cleaning for removing insecticidal sprays and to inhibit growth of fruit mold;
- g. As a denture cleaner;
- h. To emulsify casein paints; and
- i. As a general industrial cleaner for removing oil and grease.

Total industry sales in recent years have been substantial; in 1956, such sales amounted to approximately \$6,500,000.

TSP is sold by respondent manufacturers to numerous types of customers located throughout the United States. It is sold direct to soap and detergent manufacturers, meat packing plants and other direct users of TSP including Federal institutions as well as State, county and municipal institutions. TSP is also sold to wholesalers who resell to the consuming public and is sold direct to many customers through brokers.

PAR. 5. Respondent MCA is a trade association whose membership is composed of manufacturers of TSP and various other chemicals and chemical products. Respondent MCA has been and now is engaged through its divisions, committees and operating units in a wide range of activities of mutual interest to its members including standardization programs, traffic and transportation problems and other

manufacturing, distribution and sales procedures. Respondent manufacturers are, or formerly were, or the corporations heretofore named that have been acquired by them were, members of respondent MCA, and have for a number of years, through such membership and otherwise, directly or indirectly participated in the cooperative and collective action of all of those named herein as respondents in formulating, engaging in and making effective the methods, systems, acts, practices and policies which are alleged herein to be unlawful. Respondent MCA has participated, engaged and continues to so participate and engage in aiding respondent manufacturers in carrying out the unlawful acts and practices and unfair methods of competition alleged herein which affect competition between the respondent manufacturers and between respondent manufacturers and others not parties hereto.

Blockson Chemical Corporation, Victor Chemical Works and Shea Chemical Corporation, now defunct corporations, had for a number of years, through membership in respondent MCA and otherwise, directly or indirectly participated in the cooperative and collective action of all of those named herein as respondents in formulating, engaging in and making effective the methods, systems, acts, practices and policies which are alleged herein to be unlawful. Olin Mathieson Chemical Corporation, which acquired and merged Blockson Chemical Company, Hooker Chemical Corporation, which acquired and merged Shea Chemical Corporation, and Stauffer Chemical Company, which acquired and merged Victor Chemical Works, have, after so acquiring and merging the former corporations, continued in effect the methods, systems, acts, practices and policies alleged herein to be unlawful.

PAR. 6. Respondent manufacturers, either directly or indirectly through subsidiary or affiliated corporations or operating divisions, acting between and among themselves and with others not named herein as parties respondent and through and by means of respondent MCA, for many years last past and continuing to the present time, have maintained and now maintain and have in effect an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to hinder, lessen restrict, restrain, suppress and eliminate competition in the manufacture, distribution and sale of TSP in the course of the aforesaid commerce by use of the following:

- a. Fixed or maintained arbitrary, artificial, noncompetitive or rigid prices;
- b. Fixed or maintained prices, terms and conditions of sale through the common use of a multiple basing point system. Under this system

there are governing basing points used in determining freight charges for any destination for delivery of TSP in the United States. Except as set forth under the succeeding subparagraph c, each TSP producing plant for each respondent manufacturer is designated by all respondent manufacturers as a basing point to be used in determining freight charges from such point to any destination in the United States. All of the respondent manufacturers use the same base price in arriving at the delivered price for TSP at any destination in the United States. In arriving at the delivered price for TSP at any destination, the governing basing point must first be determined. This is done by adding to the base price the rail or truck freight costs from each basing point likely to govern the destination in question. Whatever basing point has the lowest total of these two factors, basing price plus freight costs, governs the price at the destination in question.

Under this pricing system each producing and shipping respondent manufacturer quotes and charges to any destination in the United States a delivered price derived by the use of this formula. The result of the use of the formula is the quoting of a delivered price for TSP by every respondent manufacturer identical with the delivered price quoted by all other respondent manufacturers to any delivery destination in the United States;

c. Respondent manufacturers of TSP have adopted, maintained and made effective a type of zone delivered price plan or system, governing the distribution and sales of TSP in certain geographic areas such as metropolitan New York, New York; Philadelphia, Pennsylvania; and Chicago, Illinois, whereby the uniform base prices, applicable under the aforesaid basing point freight equalization plan or system, together with an arbitrary and uniform delivery charge in lieu of freight are used with the result that prices offered by respondent manufacturers to all purchasers within said zones, regardless of shipping points and differences in freight rates from the various shipping points to these destinations, are identically or substantially matched;

d. Fixed or maintained prices by adopting or using the same general standard type and size of containers in which TSP is packaged, shipped and sold, or by adopting or using identical differentials for the sale of TSP in the various standard containers;

e. Fixed or maintained prices by the adoption or use of identical quantity differentials for TSP, such as adopting and using identical carload and less-than-carload prices or identical truckload or less-than-truckload prices;

f. Respondents, by mutual agreement and understanding between and among themselves, and by means of and through the respondent

MCA, have promoted adherence to the freight equalization plan or system by the dissemination and exchange among themselves of freight rate data and information; and

g. Fixed or maintained prices by adopting or using uniform or substantially uniform contracts with identical or substantially identical provisions containing uniform or substantially uniform terms and conditions of sale.

PAR. 7. The acts and practices of the respondents, as herein alleged, have had and do have the effect of hindering, lessening, restricting, restraining, and eliminating competition in the sale of TSP; are all to the prejudice and injury of customers of respondents and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Manufacturing Chemists' Association, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at the Universal Building, Connecticut and Florida Avenues, Washington, D.C.

Respondent Olin Mathieson Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State

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of Virginia with its office and principal place of business located at 460 Park Avenue, New York 22, N.Y.

Respondent Monsanto Chemical Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 800 North Lindbergh Boulevard, St. Louis 66, Mo.

Respondent Allied Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 61 Broadway, New York 6, N.Y.

Respondent The American Agricultural Chemical Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 100 Church Street, New York 7, N.Y.

Respondent FMC Corporation, formerly operating under the name Food, Machinery and Chemical Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place for transacting the business of its Chemical Division located at 633 3rd Avenue, New York 17, N.Y.

Respondent Virginia-Carolina Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 401 East Main Street, Richmond, Va.

Respondent Hooker Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 666 Fifth Avenue, New York 19, N.Y.

Respondent Stauffer Chemical Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 380 Madison Avenue, New York 17, N.Y.

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

ORDER

I

A. *It is ordered*, That respondents Manufacturing Chemists' Association, Inc., Olin Mathieson Chemical Corporation, Monsanto Chemical Company, Allied Chemical Corporation, The American Agricultural Chemical Company, FMC Corporation, Virginia-Carolina

Chemical Corporation, Hooker Chemical Corporation and Stauffer Chemical Company, their respective officers, agents, representatives, employees, directly or through any corporate or other device in or in connection with the manufacture, offering for sale, sale or distribution of trisodium phosphate, hereinafter referred to as TSP, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices.

1. Fixing or maintaining arbitrary, artificial, noncompetitive or rigid prices;
2. Fixing or maintaining prices, terms and conditions of sale through the use of a basing point system, or any system by which prices are equalized at shipment destinations without regard to actual shipping costs;
3. Adopting, maintaining or making effective a zone delivered pricing plan or system, governing the distribution and sale of TSP in any geographic area or areas, whereby uniform base prices, together with uniform delivery charges in lieu of freight, are used to determine prices in such area or areas;
4. Fixing or maintaining prices by adopting or using the same general standard type or size of containers in which TSP is packaged, shipped and sold, or by adopting or using identical differentials for the sale of TSP in the various standard containers;
5. Fixing or maintaining prices by the adoption or use of identical quantity differentials for TSP, such as adopting or using identical carload and less-than-carload prices or identical truckload or less-than-truckload prices;
6. Collecting, compiling, circulating or exchanging information concerning transportation charges or other charges in lieu thereof used or to be used as a factor in computing the price of TSP; or using, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of TSP;
7. Fixing or maintaining prices by adopting or using uniform or substantially uniform contracts with identical or substantially identical provisions containing uniform or substantially uniform terms and conditions of sale.

B. Nothing contained herein shall prevent any respondent manufacturer, acting independently, from negotiating or carrying out in

good faith a contract to manufacture, or to sell to or buy from any bona fide customer or supplier, whether such customer or supplier is or is not a respondent herein.

II

It is further ordered, That each respondent manufacturer shall, within sixty (60) days after the date of service of this Order, individually and independently, revise its prices and pricing systems and policies on trisodium phosphate in the following manner:

A. Review its prices, price lists, discounts and differentials, and pricing systems and policies, on the basis of its own costs, the margin of profit individually desired, and other lawful considerations;

B. Withdraw its presently effective prices, price lists, discounts, differentials and pricing systems. Prices in any contract outstanding at the time this Order issues shall be withdrawn on the earliest date permitted by the terms of such contract.

C. Establish new prices, price lists, discounts and allowances determined under (A) above, which prices shall become effective not later than sixty (60) days after the date of service of this Order. Nothing contained herein shall prevent any respondent, acting independently, from thereafter deviating from, modifying, or otherwise changing the established new prices for any lawful purpose.

D. In the event any prices, price lists, discounts, or allowances thus established are changed within the period of two (2) years following their adoption, the respondent making such change shall have the burden of establishing that such change was made in good faith to meet a competitive pricing situation or for any lawful purpose.

III

It is further ordered, That each of the respondents shall, within sixty (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 it has complied with this Order.

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IN THE MATTER OF

BERMAN FURS & SPORTSWEAR, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-285. Complaint, Dec. 19, 1962—Decision, Dec. 19, 1962

Consent order requiring a Rochester, N.Y., furrier to cease violating the Fur Products Labeling Act by removing required labels from fur products prior to ultimate sale; failing to label fur products; failing to show on invoices that products contained artificially colored furs, and to use the term "natural" where required; by advertising which failed to disclose the country of origin of imported furs, and representing falsely that fictitious prices were reductions from regular retail prices; by failing to maintain adequate records as a basis for price and value claims; and failing to comply in other respects with the requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Berman Furs & Sportswear, Inc., a corporation, and Anna Berman, Harold Berman, and Benjamin Berman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 in that respect as follows:

PARAGRAPH 1. Respondent Berman Furs & Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 684 North Clinton Avenue, Rochester, N.Y.

Respondents Anna Berman, Harold Berman and Benjamin Berman are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

Respondents retail fur products and sportswear.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribu-