

It is further ordered, that respondents shall, within sixty (60) days after service of the order herein upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

E. W. SEDERSTROM TRADING AS DAKOTA SEED &
GRAIN COMPANY

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

Docket 8621. Complaint, Apr. 17, 1964—Decision, Oct. 8, 1964

Order requiring a Sioux Falls, S.Dak., seller of seeds and grain to cease misrepresenting the nature of his business, his contractual obligations, that prospective customers are specially selected, and making other false claims.

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 E. W. Sederstrom, trading as Dakota Seed & Grain Company, has 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 in that respect as follows:

PARAGRAPH 1. Respondent, E. W. Sederstrom, is an individual trading and doing business as Dakota Seed & Grain Company, with his principal office and place of business located at 104 North Covell Street in the city of Sioux Falls, South Dakota.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of seeds and grain to the public.

*Paragraph 3 reported as amended by order of Hearing Examiner dated Aug. 18, 1964.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from the States of North Dakota, South Dakota, and Colorado to purchasers located in various other States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, as aforesaid, respondent and respondent's sales agents or representatives call upon prospective purchasers and solicit the purchase of respondent's products. In the course and conduct of such solicitations, respondent and his sales agents or representatives, either directly or by implication, have made certain statements and representations to prospective purchasers of respondent's products, typical, but not all inclusive of which are the following:

1. Respondent is establishing a malting barley production program, similar to those of well-known or well-established seed concerns, in which his customers can profitably participate by growing barley for respondent from seeds sold by him.

2. As part of such program, respondent will purchase, and, under the terms of a written instrument, is contractually bound to purchase his customer's harvest at premium prices subject only to conditions in said instrument specifying quality.

3. The quality standards provided for by respondent in said written instrument are adequate to satisfy the standards of the malting barley market, and can be easily met by prospective customers.

4. Respondent is a large, well-established seed concern with the facilities, resources and personnel to carry out a program of malting barley production such as respondent is establishing, and has contracts, connections or agreements with well-known breweries and other industries using malting barley whereby a ready market is available for the sale of malting barley at premium prices.

5. Respondent's prospective customers are specially selected.

PAR. 5. In truth and in fact:

1. Respondent does not establish bona fide malting barley production programs in which purchasers of its seed can profitably participate.

2. Respondent does not purchase the harvest from a substantial number of his customers, nor is he contractually bound to purchase his customers' harvest. Instruments executed by respondent and his customers are merely "options" giving respondent the right but not obligating him to purchase said harvest.

3. The quality standards set forth by respondent do not satisfy the

requirements of a substantial part of the malting barley market, nor can malting barley of a marketable quality be easily produced for a variety of reasons, one of which is that malting barley of marketable quality is especially difficult to produce for a substantial number of respondent's customers as such customers' farms are located in an area unsuited for the production of such barley.

4. Respondent is not a large, well-established seed concern with facilities and personnel sufficient to carry out a bona fide malting barley production program, and he does not have contracts, connections or agreements with well-known breweries or other industries who will purchase respondent's products at premium prices.

5. Respondent's customers are not specially selected.

Therefore, the statements and representations as set out in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 6. In the course and conduct of respondent's business as aforesaid, respondent has been, and now is, in direct and substantial competition in commerce with other individuals and with various firms and corporations engaged in the sale in commerce of seeds and grain.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Guy E. Yelton supporting the complaint.

Respondent *Mr. E. W. Sederstrom, pro se.*

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

AUGUST 26, 1964

STATEMENT OF THE PROCEEDING

The Federal Trade Commission issued its complaint in this matter April 17, 1964, charging respondent with misrepresentation in the sale and distribution of seeds and grain, in violation of Section 5 of

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the Federal Trade Commission Act. The complaint was duly served, and respondent, on May 13, 1964, filed answer generally denying its allegations. The answer was signed both by respondent and by the law firm of Willy, Pruitt & Matthews, of Sioux Falls, South Dakota, which had duly filed its appearance as his counsel.

A prehearing conference was set for August 18, 1964, in Sioux Falls, South Dakota, with hearings to follow in Denver, Colorado. At the prehearing conference, respondent appeared in person and stated that he no longer was represented by counsel. After extended discussion, in which the hearing examiner carefully advised him of his rights, respondent elected to withdraw the denial answer previously filed, thereby waiving his right to contest the allegations of the complaint and authorizing the hearing examiner, without further notice, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, together with appropriate conclusions and order.

Without objection by counsel supporting the complaint, respondent's motion to withdraw his answer was granted, the answer was ordered stricken from the record, and the hearings set for August 20-21, 1964, in Denver, Colorado, were cancelled.

The record thus containing no answer by respondent, and respondent having explicitly expressed his intention to file no further answer and his desire

that such withdrawal shall be treated as though no answer had been filed under Section 3.5(c) of the Commission's Rules of Practice, and * * * that such withdrawal be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint,

he is thereby in default. Moreover, in his motion, he has specifically authorized the hearing examiner, without further notice,

to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

Therefore, in accordance with respondent's motion, and pursuant to § 3.5(c) of the Commission's Rules of Practice for Adjudicative Proceedings, effective August 1, 1963, the hearing examiner hereby declares respondent in default, now finds the facts to be as alleged in the complaint, and enters his initial decision containing such findings, appropriate conclusions drawn therefrom and order to cease and desist, as follows:

FINDINGS OF FACT

1. Respondent, E. W. Sederstrom, is an individual trading and doing business as Dakota Seed & Grain Company, with his principal

office and place of business located at 104 North Covell Street in the city of Sioux Falls, South Dakota.

2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of seeds and grain to the public.

3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from the States of North Dakota, South Dakota, and Colorado to purchasers located in various other States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of his business, as aforesaid, respondent and respondent's sales agents or representatives call upon prospective purchasers and solicit the purchase of respondent's products. In the course and conduct of such solicitations, respondent and his sales agents or representatives, either directly or by implication, have made certain statements and representations to prospective purchasers of respondent's products, typical, but not all inclusive of which are the following:

1. Respondent is establishing a malting barley production program, similar to those of well-known or well-established seed concerns, in which his customers can profitably participate by growing barley for respondent from seeds sold by him.

2. As part of such program, respondent will purchase, and, under the terms of a written instrument, is contractually bound to purchase his customer's harvest at premium prices subject only to conditions in said instrument specifying quality.

3. The quality standards provided for by respondent in said written instrument are adequate to satisfy the standards of the malting barley market, and can be easily met by prospective customers.

4. Respondent is a large, well-established seed concern with the facilities, resources and personnel to carry out a program of malting barley production such as respondent is establishing, and has contracts, connections or agreements with well-known breweries and other industries using malting barley whereby a ready market is available for the sale of malting barley at premium prices.

5. Respondent's prospective customers are specially selected.

5. In truth and in fact:

1. Respondent does not establish bona fide malting barley production programs in which purchasers of its seed can profitably participate.

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2. Respondent does not purchase the harvest from a substantial number of his customers, nor is he contractually bound to purchase his customers' harvest. Instruments executed by respondent and his customers are merely "options" giving respondent the right but not obligating him to purchase said harvest.

3. The quality standards set forth by respondent do not satisfy the requirements of a substantial part of the malting barley market, nor can malting barley of a marketable quality be easily produced for a variety of reasons, one of which is that malting barley of marketable quality is especially difficult to produce for a substantial number of respondent's customers as such customers' farms are located in an area unsuited for the production of such barley.

4. Respondent is not a large, well-established seed concern with facilities and personnel sufficient to carry out a bona fide malting barley production program, and he does not have contracts, connections or agreements with well-known breweries or other industries who will purchase respondent's products at premium prices.

5. Respondent's customers are not specially selected.

Therefore, the statements and representations as set out in Paragraph 4 hereof were and are false, misleading and deceptive.

6. In the course and conduct of respondent's business as aforesaid, respondent has been, and now is, in direct and substantial competition in commerce with other individuals and with various firms and corporations engaged in the sale in commerce of seeds and grain.

7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

CONCLUSIONS

The aforesaid acts and practices of respondent, as herein found, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, E. W. Sederstrom, an individual trading as Dakota Seed & Grain Company, or under any other name

or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of seeds, grain or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that:

(a) Respondent is establishing, sponsoring or maintaining a program for the production or marketing of seed, grain or other products for customer participation, or misrepresenting in any other manner the nature of respondent's business.

(b) Respondent will purchase or is contractually bound to purchase all or part of the harvest or increase grown, raised or produced by his customers from products sold by respondent, or misrepresenting in any manner the obligations incurred by respondent under his contracts with purchasers.

(c) Prospective customers are specially selected.

2. Misrepresenting in any manner:

(a) The quality standards established by users of seed, grain or other products.

(b) The ease by which growers may produce products which will meet the quality standards of the brewery or other users of seed, grain or other products.

(c) The opportunities afforded or available to customers to market their products.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 8th day of October, 1964, become the decision of the Commission.

It is further ordered, That E. W. Sederstrom, an individual trading and doing business as Dakota Seed & Grain Company, shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing, setting forth in detail the manner and form of his compliance with the order to cease and desist.

Complaint

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IN THE MATTER OF
RAINBOW-UNITED PHOTOGRAPHIC STUDIOS OF
AMERICA, INC., ET AL.

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

Docket C-847. Complaint, Oct. 8, 1964—Decision Oct. 8, 1964

Consent order requiring Chicago, Ill., sellers of color photographs through door-to-door solicitation to cease misrepresenting the nature of their business, the quality of their pictures, and the promptness of delivery.

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 Rainbow-United Photographic Studios of America, Inc., a corporation, and Bernard Baskin and George Whitehouse, 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 in that respect as follows:

PARAGRAPH 1. Respondent Rainbow-United Photographic Studios of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2414 West Lawrence Avenue, in the city of Chicago, State of Illinois.

Respondents Bernard Baskin and George Whitehouse are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of color photographs to the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the