

Complaint

IN THE MATTER OF

THOMAS F. LUKENS METAL COMPANY ET AL.

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

Docket C-1089. Complaint, August 2, 1966—Decision, August 2, 1966

Consent order requiring a Philadelphia distributor of commercial solders to cease misrepresenting the tin content of its products.

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 Thomas F. Lukens Metal Company, a corporation, and Mitchell Steinberg, individually and as an officer 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 Thomas F. Lukens Metal Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 2915 East Hedley Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Mitchell Steinberg is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 commercial solders including wire solders designated "50/50 by volume" and "40/60 by volume." Said solders are sold to retailers for ultimate resale to the 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 Pennsylvania 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 purpose of inducing the purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing certain of said solders as "50/50 by volume" and "40/60 by volume."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solders, the respondents represented:

(1) That their wire solder designated "50/50 by volume" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

(2) That their wire solder designated "40/60 by volume" is a 40/60 solder which is known in the trade as a solder containing 40% tin and 60% lead by weight.

PAR. 6. In truth and in fact:

(1) Their wire solder designated "50/50 by volume" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

(2) Their wire solder designated "40/60 by volume" is not a 40/60 solder as known in the trade as it contains less than 40% tin and more than 60% lead by weight.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents 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 such statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the

public and of the respondents' 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.

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 agreements, 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 Thomas F. Lukens Metal Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 2915 East Hedley Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Mitchell Steinberg is an officer of the corporate respondent and his address is the same as that of the corporate respondent.

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

It is ordered, That respondents Thomas F. Lukens Metal Company, a corporation, and its officers, and Mitchell Steinberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any

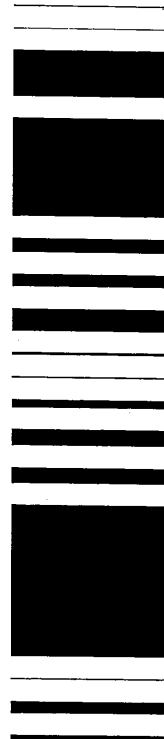
corporate or other device, in connection with the offering for sale, sale or distribution of solders, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the designation 50/50 alone or in conjunction with the words "by volume" to designate, describe or refer to a commercial solder which does not contain 50% tin by weight: *Provided, however*, That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(2) Using the designation 40/60 alone or in conjunction with the words "by volume" to designate, describe or refer to a commercial solder which does not contain 40% tin by weight: *Provided, however*, That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(3) Misrepresenting by any numerical designation or in any other manner the tin content of any of their solders: *Provided, however*, That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

It is further ordered, That the respondents herein 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 this order.



Complaint

IN THE MATTER OF

BEATRICE FOODS CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (d) OF THE CLAYTON ACT*Docket C-1090. Complaint, Aug. 2, 1966—Decision, Aug. 2, 1966*

Consent order requiring a Chicago, Ill., wholesale food processor to cease discriminating among its competing customers in paying promotional allowances for its oriental food products, in violation of Section 2(d) of the Clayton Act.

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 (d) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent named herein is Beatrice Foods Co. Respondent is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 120 South LaSalle Street, Chicago, Illinois.

PAR. 2. Respondent, through its La Choy Food Products Division, for many years has been and is now extensively engaged in the business of manufacturing, processing, distributing and selling oriental food products including, chow mein, chop suey, soy sauce, bean sprouts, bamboo shoots, water chestnuts, chow mein noodles, chop suey vegetables, mixed Chinese vegetables, and sweet and sour sauce, throughout the United States and in the District of Columbia through the services of more than sixty brokers. Respondent's La Choy Food Products Division manufactures and processes its oriental food products at its plant in Archbold, Ohio. Respondent's total sales for all products for the year 1965 exceeded \$600 million. Respondent's total sales of its La Choy Food Products Division exceeded \$10 million in 1965.

PAR. 3. In the course and conduct of its business in commerce, respondent is now and for many years past has been, engaged in commerce, as "commerce" is defined in the Clayton Act, in that it