

Complaint

76 F.T.C.

IN THE MATTER OF

ASSOCIATED PEST CONTROL SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 2(f) OF THE CLAYTON ACT*Docket C-1638. Complaint, Nov. 26, 1969—Decision, Nov. 26, 1969*

Consent order requiring a Memphis, Tenn., association of pest controllers to cease inducing and receiving discriminatory prices for pesticides and related products from suppliers of such products.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Associated Pest Control Services, Inc., hereinafter referred to as "Associated," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee.

Respondent Associated is an association of pest control organizations which was ostensibly organized to further the interests and development of the members of the association, through the interchange of ideas, the dissemination of scientific information and other services and purposes incidental to the general welfare of its members. Its membership is comprised of persons, partnerships and corporations engaged in the performance of pest control, industrial sanitation and exterminating services. Associated also performs other services for its members, including the negotiation of discounts for its members from distributors of pesticides, application equipment and other necessary supplies.

Respondent Associated had approximately 37 members in October 1967, which members were located in 17 States of the United States, the Dominion of Canada, and the Bahamas. The membership of Associated constitutes a class so numerous and changing as to make it impracticable to specifically name and describe each and all of such members as parties respondent herein.

Respondent Kotler Exterminating Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee. It is a member of respondent Associated and is fairly representative of the entire membership of Associated. It is named as a respondent herein in its individual capacity and as representative of all members of respondent Associated. All such members not named specifically are therefore made parties respondent herein as though they had been named individually.

Respondent Louis I. Kotler, 1313 Poplar Avenue, Memphis, Tennessee, is an officer of respondent Associated and the president of respondent Kotler Exterminating Co., Inc. He has been responsible, in part, for the direction and control of Associated. He is named as a respondent herein in his individual capacity, as an officer of respondent Associated and as the chief executive officer of respondent Kotler Exterminating Co., Inc.

PAR. 2. The members of respondent Associated have purchased and now purchase in commerce from suppliers engaged in commerce numerous pesticides and other supplies, such as application equipment, for use, consumption or resale within the United States. Said members and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States, the Dominion of Canada, and the Bahamas from the respective State or States of location of said suppliers to the respective locations of said members of Associated. The members of respondent Associated and said suppliers are therefore engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. In the purchase, use and resale of said pesticides and supplies, the members of respondent Associated are in active competition with independent persons, partnerships and corporations not affiliated with respondent Associated; and the suppliers selling to said members of Associated and their independent competitors are in active competition with other suppliers of similar products and supplies.

PAR. 4. Respondent Associated, since its formation in February 1959, has been and is now, maintained, managed and operated by its secretary-treasurer, respondent Louis I. Kotler, for its membership and each member has participated in, approved, furthered, or cooperated with respondent Louis I. Kotler and the other mem-

bers of Associated in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent Associated has been, and is now, serving as the medium or instrumentality by, through, or in conjunction with, which the said members of Associated exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said members of respondent Associated direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them, in whole or in substantial part, in favor of such suppliers as can be, and are, induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

This procedure effects a discrimination in price on goods of like grade and quality between the members of respondent Associated and competing independent persons, partnerships and corporations whose discounts, allowances or rebates from such suppliers are based upon only their individual volumes.

PAR. 5. Respondents have induced or received from their suppliers, in the the manner aforescribed, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 6. The effect of knowing inducement or receipt by respondents of the discriminations in price, as above alleged, has been, and may be, substantially to lessen, injure, destroy or prevent competition between suppliers of pesticides and other supplies granting such discriminations and other suppliers of such products and supplies who do not grant or allow such discriminations, and also between respondent members and competing independent customers not receiving or securing such discriminations.

PAR. 7. The foregoing acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (f) of Section 2 of the Clayton Act, as amended, 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Associated Pest Control Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee.

Respondent Kotler Exterminating Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee. It is a member of Associated and is fairly representative of the entire membership of Associated.

Respondent Louis I. Kotler is an officer of Associated and is president of Kotler Exterminating Co., Inc. He has been responsible in part, for the direction and control of Associated. His address is the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Associated Pest Control Services, Inc., a corporation, Kotler Exterminating Co., Inc., a corporation, individually and as a member of and as representative of the entire membership of Associated Pest Control Services, Inc., all other members of Associated Pest Control Services, Inc., and Louis I. Kotler, individually and as an officer of respondents Associated Pest Control Services, Inc., and Kotler Exterminating Co., Inc., their respective successors and assigns, officers, agents, representatives, employees and members, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any pesticides and other supplies, such as application equipment, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Directly or indirectly inducing and receiving, receiving or accepting any discrimination in the price of such products by accepting from any seller a net price respondents know or should know is below the net price at which said products of like grade and quality are being sold by such seller to other purchasers where respondents are competing with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

For the purpose of determining the "net price" under the terms of this order, there shall be taken into account all discounts or other terms and conditions of sale by which net prices are affected.

It is further ordered, That the respondent corporation, Associated Pest Control Services, Inc., shall forthwith distribute a copy of this order to each of its members.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance obligations arising out of the order.

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.

IN THE MATTER OF

KEENEY BROTHERS FARMS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1639. Complaint, Nov. 26, 1969—Decision, Nov. 26, 1969*

Consent order requiring a New Freedom, Pa., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality and fertility of its stock, and misrepresenting its services to purchasers.

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 Keeney Brothers Farms, a partnership, and Alvin L. Keeney and Elmer H. Keeney, individually and as copartners trading and doing business as Keeney Brothers Farms, and Larry Keeney, individually and as an office manager of said partnership, 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 Keeney Brothers Farms is a partnership comprised of Alvin L. Keeney and Elmer H. Keeney who formulate, direct and control its acts, policies and practices, including those hereinafter set forth. The principal office and place of business of said partnership is located at Route 2, New Freedom, Pennsylvania.

Respondents Alvin L. Keeney and Elmer H. Keeney are individuals and copartners trading and doing business as Keeney Brothers Farms, with their principal office and place of business at the above-stated address.

Respondent Larry Keeney is an individual and office manager of said partnership. He cooperated in and effectuated the acts, policies and practices of the partnership. His address is the same as that of the partnership.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.