

(a) Correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939;

(b) Setting forth the common generic name of fibers in the required information on labels, tags or other means of identification attached to wool products.

It is further ordered, That respondent Spinnerin Yarn Co., Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not falsely or deceptively stamped, tagged, labeled, or otherwise identified when respondent has reason to believe that such wool product may be introduced, sold, transported or distributed in commerce.

It is further ordered, That respondent Spinnerin Yarn Co., Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarn or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in yarn or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it 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.

IN THE MATTER OF

NATIONAL TEA CO.

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 7453. Complaint, March 26, 1959—Decision, March 4, 1966

The Commission, having set aside the initial decision of its hearing examiner, makes new findings of fact and conclusions of law on the record, and or-

Complaint

ders the National Tea Co., the Nation's fifth largest retail food chain, not to acquire any stock or assets of any retail food store for a period of 10 years without prior Commission approval.

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 Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended and approved December 29, 1950, 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, National Tea Co. (hereinafter referred to as respondent), is a corporation organized in 1902 under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1000 N. Crosby Street, Chicago 10, Illinois.

PAR. 2. Respondent is controlled by Loblaw Groceterias Co., Limited, Loblaw Companies, Limited, and George Weston, Limited, all of which are Canadian corporations.

PAR. 3. Respondent is engaged in the business of operating a chain of approximately 883 retail food stores in 16 States of the United States and sells a wide variety of merchandise, including a substantial number of items manufactured, processed and packaged under trademarks or brands owned or controlled by the respondent. Respondent operates its own bread and cake bakeries in Chicago, Illinois, Hopkins, Minnesota, Milwaukee, Wisconsin, Detroit, Michigan, and Denver, Colorado. In addition, the respondent manufactures or processes coffee, peanut butter, salad oils, preserves, extracts and soft drinks. Meat packing plants are operated by respondent at Fergus Falls, Minnesota, Denver, Colorado, and Port Huron, Michigan. Respondent is engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 4. The three Canadian corporations referred to in Paragraph Two hereof also control or own outright many corporations and concerns engaged in the manufacture, processing, sale and distribution of merchandise in the United States, and a substantial volume of such merchandise is sold through respondent's stores.

Certain members of the board of directors of the respondent and the Canadian corporations heretofore mentioned also own or control an interest in corporations or businesses other than the respondent, and some of these corporations and businesses sell a substantial volume of merchandise to the respondent for sale through the respondent's retail outlets.

PAR. 5. Respondent is one of the largest retail food chains in the United States and, as of July 23, 1957, ranked fifth in total sales volume among the food chains of this country. Respondent's net sales increased from approximately 270 million dollars in 1948 to 681 million dollars in 1957, an increase of approximately 411 million dollars, or over 250 percent.

PAR. 6. The food industry is the largest segment of the American economy. According to the 1954 Census of Business, there were 385,000 food stores of all types in the United States. As of 1954, 6,334 grocery stores had individual sales of one million dollars or more, and 16,466 stores reported sales figures ranging from \$300,000 to one million dollars each.

Concentration of grocery store sales in large corporate chains has been intensified in the United States through sustained programs of corporate acquisitions. Twenty percent of the grocery stores in the United States accounts for over seventy-two percent of the total grocery store sales in the country. From 1954 to 1957 some thirty-six corporations absorbed eighty-eight grocery chains and thereby acquired during this period over one and a half billion dollars in total sales.

PAR. 7. Beginning in 1921, the respondent initiated a policy of expansion by acquiring a large number of food retailers and other concerns engaged in the manufacture, processing and distribution of food products.

As a result of its policy of expansion by acquisition, the respondent has purchased, in selected localities, more than 1,300 retail grocery stores, numerous warehouse facilities, packing and processing plants, as well as other interests.

All of the acquired corporations, prior to and at the time of the acquisitions, were engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondent's acquisitions include, among others, all or part of the stock or assets of the following corporations:

1952

C. F. Smith Company, Detroit, Michigan, including 211 stores.
Northwest Piggly-Wiggly Co., Duluth, Minnesota, including 6 stores.

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George T. Smith's Market Baskets, Inc., Lansing, Michigan, including 6 stores.

Dole Super Markets, Inc., Battle Creek, Michigan, and Kalamazoo, Michigan, including 6 stores.

1953

Food Center Stores, St. Louis, Missouri, including 28 stores.

1954

Capitol Stores, Inc., Baton Rouge, Louisiana, including 28 stores.

1955

H. A. Smith Markets, Inc., Detroit, Michigan, including 9 supermarkets and a meat packing plant.

1957

Miller Supermarkets, Inc., Denver, Colorado, including 27 supermarkets.
Tolerton & Warfield Co., Sioux City, Iowa, including 85 stores.

Logan's Super Markets, Inc., Nashville, Tennessee, including 9 stores.

DeVan Horner, Inc., Mobile, Alabama, including 7 stores.

1958

Illinois Valley Stores Co., Peoria, Illinois, including 7 stores.

Del Farm Stores, Chicago, Illinois, including 12 stores.

PAR. 8. The effect of the aforesaid acquisitions by the respondent, individually and collectively, through increased concentration and otherwise, may be substantially to lessen competition or to tend to create a monopoly in the processing, manufacturing, purchasing and distributing of products sold in grocery stores and in the sale of merchandise in retail grocery stores within the meaning of Section 7 of the Clayton Act.

PAR. 9. The foregoing acquisitions alleged and set forth in Paragraph Seven hereof constitute a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended and approved December 29, 1950.

PAR. 10. The acquisitions hereinbefore described tending substantially to lessen competition or to create monopoly are to the prejudice and injury of the public and constitute an unfair method of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 11. The foregoing acquisitions, acts and practices, as hereinbefore alleged and set forth, constitute a violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45).

Mr. John T. Walker supporting the complaint.

Kirkland, Ellis, Hodson, Chaffetz & Masters by *Mr. Hammond E. Chaffetz*, *Mr. William R. Jentes*, *Mr. William J. Lederer* and

Initial Decision

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Mr. Karl F. Nygren, Chicago, Ill., and *Mr. Frederick M. Rowe*, Washington, D.C., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

APRIL 5, 1963

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This proceeding is based upon a complaint charging the respondent, National Tea Co., a corporation, with violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended and approved December 29, 1950, by reason

of certain acquisitions made by respondent subsequent to December 29, 1950.

This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence and proposed findings as to the facts and conclusions, together with briefs and reply briefs presented by counsel. The hearing examiner has given consideration to the proposed findings submitted by both parties and briefs in support thereof, and all findings, conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein and being duly advised in the premises, makes the following findings of fact and conclusions drawn therefrom and order.

I

NATIONAL TEA CO.

1. Respondent, National Tea Co., is a corporation organized in 1902, under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1000 North Crosby Street, Chicago 10, Illinois.

2. Respondent is engaged in operating a chain of retail, self-service, cash and carry, food stores dealing in groceries, fresh fruits, vegetables, bakery and dairy products, frozen foods, meats, poultry, fish and other items. Generally the products that respondent sold included nationally and locally known and distributed merchandise, as well as items manufactured, processed or packaged and sold under trade names or brands owned or controlled by the respondent.¹

3. In 1955, Loblaw Groceterias Co., Limited, a Canadian corporation and subsidiary of George Weston, Ltd. of Canada, purchased a substantial portion of the common stock of National Tea Co., and as of June 1, 1957, said Loblaw Groceterias Co., Limited, owned 724,857 shares of the common stock of National Tea Co., amounting to 34.17% of the common stock of National Tea Co. The officers and directors of National Tea Co., owned 1.77% of said common stock and the remaining 64.6% was distributed

¹ Prospectus dated June 18, 1951, shows that private brand merchandise amounted to approximately 10% of total business (CX 38, p. 4). Prospectus dated November 14, 1955, shows private brand merchandise accounted for 20% of total business (CX 39, p. 5). H. V. McNamara testifying on September 8, 1960, in this proceeding stated that for the past 15 years National Tea has been known for its policy of stocking nationally known brands. (Tr. 787.)

among nearly 6,000 stockholders. Loblaw Groceterias Co., Limited, in addition to operating a number of food stores in Canada, also controlled a New York corporation, Loblaw, Inc., which operated over 180 food stores in western New York, Pennsylvania, Ohio, and West Virginia, with annual sales of over \$240,000,000 in 1957. In June 1962, National Tea Co., acquired 115 supermarkets with annual sales of \$115,000,000, which had been operated by Loblaw, Inc., in the Youngstown and Pittsburgh areas. The purchase price of \$23,000,000 was payable by delivery of 1,362,963 shares of National Tea common stock. This transaction increased ownership of the Canadian Loblaw organization in National Tea Co., from approximately 35% to 45%.²

4. At the time of the issuance of the complaint, on March 26, 1959, respondent operated a chain of approximately 932 retail food stores in 18 states, located in the Middle West, West and lower Mississippi Valley. As of January 3, 1959, respondent ranked fifth in sales volume among the food chains of the country. Respondent's gross sales for the 53 weeks ending January 3, 1959, was \$794,162,135.³ The operations of the respondent have been decentralized and are handled through twelve separate territorial branches, each of which is under a branch manager who reports directly to the president and each of which is a substantially complete and integrated unit with its own warehouse facilities to serve the stores under its jurisdiction. The headquarters of such territorial branches are located in Chicago, Minneapolis, Milwaukee, Indianapolis, Detroit, Kalamazoo, St. Louis, New Orleans, Memphis, Davenport, Denver and Sioux City, Iowa. As of January 3, 1959, the 932 stores operated by respondent were distributed among the territorial branches and located in the various states as follows:

² CX 681.

³ CX 43 A, p. 7.

NATIONAL TEA CO.

Initial Decision

Location of Stores and Warehouses as of January 3, 1959⁴

States	Chicago	Minneapolis	Milwaukee	Indianapolis	Detroit	Kalamazoo	St. Louis	New Orleans	Memphis	Davenport	Denver	Sioux City	Tot.
Alabama								7	1				8
Arkansas									3				3
Colorado	230										31		31
Illinois							17			26			273
Indiana	15			71		11							97
Iowa										16		34	50
Louisiana								41					41
Michigan		1	3		72	28							104
Minnesota		120											125
Mississippi								7	3				10
Missouri							37		1				38
Nebraska												21	21
N. Dakota													10
Ohio		10			4								4
S. Dakota		1										15	16
Tennessee									24				24
Wisconsin		11	64										75
Wyoming											2		2
Total	245	143	67	71	76	39	54	55	32	42	33	75	932

⁴ CX 43(A).

