IN THE MATTER OF

NATIONAL MODES, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTIONS C AND D OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5338. Complaint, June 23, 1945—Decision, Feb. 3, 1950

Where 11 concerns engaged in the the manufacture of women's apparel and in the sale thereof to some 14 retailers in large cities, and to numerous other such retailer clients of a purchasing corporation, which acted as their agent, under the direction of individual B and as associated with a company owned by said retailers and said B, in carrying out a group buying and promotion scheme or program, including national advertising, directed to the resale of women's apparel bearing trade-marks and trade names controlled by the corporation, such as "Caroline" and "Jeanne Barrie"; and which were agents or intermediaries acting in fact for such buyers, exclusively engaged in furnishing to them purchasing and other valuable services in return for certain contract service charges which the buyers obligated themselves to pay—

(*a*) From June 19, 1936, until 1942, paid or granted allowances to aforesaid buyers, on sales for the buyers' own accounts, through (1) paying to said purchasing corporation sums which were equal or substantially equal to said contract service fees and were accepted in lieu thereof; (2) paying to an advertising agency of said corporations so-called advertising allowances credited to the corporations, which were not used, in whole or part, to advertise the apparel concerned, and which, to the extent not used, were equal or approximately equal to and in lieu of the direct payments above set forth, and similarly credited; and (3) granting discounts or allowances to such buyers which were substantially equal to the direct payments above set out to the then separately collected contract service fees; and after 1942, when such apparel was in short supply, continued such practices in connection with fewer, but many similar transactions; and

Where said intermediaries, namely, (1) said company, organized in 1925 by representatives of a group of women's apparel retailers and said B, to engage in the group buying and promotion of the resale of women's apparel under the aforesaid trade-marks and trade names, the stock of which was owned exclusively by such retailers and B; (2) said purchasing corporation, organized and controlled by B as an instrumentality for the accomplishment of the aforesaid purposes; and (3) B, himself, who was also a director and secretary of said first company and its exclusive agent in the consumation of its purposes—

(*b*) Received and accepted from aforesaid sellers allowances or discounts upon purchases made from them in connection with which said intermediaries acted for their buyer-clients, and transmitted such allowances to the buyers in the form of services and benefits undertaken under the aforesaid contracts and arrangements; and,

Where some 14 retailers of women's wearing apparel, and numerous other similar retailer stockholders in said first company—

(c) Received and accepted from sellers, as hereinbefore indicated, upon purchases for their own accounts, allowances or discounts in the form of credits, or services or benefits provided by said intermediaries, acting in fact for the buyers:

Held, That the paying and granting of discounts, or allowances in lieu thereof, by said sellers to said intermediaries and buyers; and the receiving and accepting thereof by said intermediaries and buyers; and the transmitting thereof by said intermediaries to said buyers; under the circumstances above set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

In said proceeding in which various respondents, with the exception of three seller corporations which were legally dissolved prior to the issuance of the complaint, and Gimbel Bros. Inc., which stated that it had ceased to be a stockholder in respondent corporation prior to the issuance thereof, entered into a stipulation of the facts in support of and in opposition to the charges in count 1 of the complaint: the Commission did not dismiss the complaint against Gimbel Bros. as respondent in its capacity as a member of a class consisting of past, present, future stockholders in said intermediary respondents as represented by the named buyer-respondents, since said respondent's failure and refusal to enter into said stipulation as to the facts for the aforesaid reason did not constitute sufficient grounds for such a dismissal; but did dismiss it against Gimbel Bros. as a named respondent, since to continue the proceeding against it in that capacity would further extend the time in which all of the respondents might participate in the illegal practices.

As respects the charges in count 2 in the complaint that some of the respondents violated subsection (d) of section 2 of the Clayton Act, as amended—matters not embraced in the aforesaid stipulation which related exclusively to count 1—the record contained no evidence in support of or in opposition to said charges, and no findings with respect thereto were made.

Mr. Philip R. Layton and *Mr. Eldon P. Schrup* for the Commission.

Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C., for National Modes, Inc., Arnold Constable & Co., Auerbach Co., Best's Apparel, Inc., Fowler, Dick & Walker, Hale Bros. Stores, Inc., A. Harris & Co., The Hecht Co., Popular Dry Goods Co., Dalton Co., King's, Inc., Ogus, Rabinovich & Ogus, Inc., and E. M. Scarbrough & Sons.

Spiro, Felstiner & Prager, of New York City, for National Modes Holding Corp. and John Block.

Marshall, Bratter, Seligson & Klein, of New York City, for H. Schreier Co., Junior Deb Coat & Suit Co., Inc., Morris W. Haft & Bros., Inc., Grossman & Spiegel, Inc., Charles Hymen, Inc., Junior Guild Frocks, Inc., Godett & Gross, Inc., Henry Rosenfeld, Inc., Henlo Sportswear, Ltd., Fred Perlberg, Inc., Shelton Coat Corp., Babs Junior, Inc., Shipman & Baker, Inc., and Rubin-Feld, Inc.

Brody & Brody, of Newark, N. J., for Eclipse Knitting Mills, Inc.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for Gimbel Bros., Inc.

Mann & Tyler, of Norfolk, Va., for Ames & Brownley, Inc.

Demov, Callahan & Morris, of New York City, also represented Morris W. Haft & Bros., Inc.

Mr. Otto A. Samuels, of New York City, also represented Shipman & Baker, Inc.

Buchter, Rathheim, Abrams & Holz, of New York City, also represented Ogus, Rabinovich & Ogus, Inc.

COMPLAINT

COUNT I

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 since June 19, 1936, violated and are now violating the provisions of subsection (c), section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Modes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 130 Thirty-first Street, New York, N. Y.

PAR. 2. Respondent National Modes Holding Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 130 West Thirty-first Street, in the city of New York, State of New York.

PAR. 3. Respondent John Block, an individual, is a stockholder, officer, and director in each of the respondents National Modes, Inc., and National Modes Holding Corp. and has his principal office and place of business at 130 West Thirty-first Street, New York, N. Y., being the same address of respondents National Modes, Inc., and National Modes Holding Corp. He owns the majority of the capital stock of respondent National Modes Holding Corp. and is secretary and a director of respondent National Modes, Inc. He is president, treasurer, and a director of respondent National Modes Holding Corp. and is also a director of respondent Arnold Constable & Co., a holding corporation which owns and controls the retail dry goods store known as Arnold Constable of New York, N. Y. Said respondent John Block is the active business head of both respondents National Modes, Inc., and National Modes Holding Corp.

PAR. 4. Respondents Hyman Schreier and Ethel Schreier, his wife, are a partnership operating under the firm name of H. Schreier Co., having its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

Respondent Junior Deb Coat & Suit Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

Respondent Eclipse Knitting Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1410 Broadway, New York, N. Y.

Respondent Morris W. Haft & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

Respondent Grossman & Spiegel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

Respondent Charles Hymen, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 237 South Market Street, Chicago, Ill.

Respondent Junior Guild Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 847 West Jackson Blvd., Chicago, Ill.

Respondent Godett & Gross, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 337 South Franklin Street, Chicago, Ill.

Respondent Henry Rosenfeld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Henlo Sportswear, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Fred Perlberg, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York

with its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

Respondent Shelton Coat Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 230 West Thirty-eighth Street, New York, N. Y.

Respondent Babs Junior, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Shipman & Baker, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

Respondent Rubin-Feld, Inc., is a corporation 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 214 West Thirty-ninth Street, New York, N. Y.

The 16 respondents named in this paragraph are hereinafter designated and referred to as "seller-respondents." Said seller-respondents and each of them are, and since June 19, 1936, have been, engaged in the business of manufacturing, selling and distributing women's dresses and women's wearing apparel to numerous buyers, including the "buyer-respondents" hereinafter set out. Said seller-respondents are fairly typical and representative of a large number of manufacturers of women's dresses and women's wearing apparel engaged in the common practice of selling a substantial portion of their products to buyers who purchase through respondents National Modes, Inc., National Modes Holding Corp., and John Block, as intermediaries for buyers. Said seller-respondents are named as parties respondent both individually and as representatives of a group or class of a large number of manufacturers engaged in selling a substantial portion of their products through respondents National Modes, Inc., National Modes Holding Corp., and John Block to the buyer-respondents.

PAR. 5. Respondent Arnold Constable & Co. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 453 Fifth Avenue, New York, N. Y.

Respondent Auerbach Co. is a corporation organized and existing under and by virtue of the laws of the State of Utah with its principal office and place of business at Salt Lake City, Utah.

Respondent Best's Apparel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business at Fifth and Pine Streets, Seattle, Wash.

Respondent Fowler, Dick & Walker is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Wilkes-Barre, Pa.

Respondent Gimbel Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at Thirty-third and Broadway, New York, N. Y., with a branch located at Ninth and Market Streets, Philadelphia, Pa., which branch is a stockholder in National Modes, Inc.

Respondent Hale Bros. Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at San Francisco, Calif.

Respondent A. Harris & Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Dallas, Tex.

Respondent The Hecht Co. is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at Seventh and F Streets NW., Washington, D. C.

Respondent Popular Dry Goods Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at El Paso, Tex.

Respondent Ames & Brownley, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its principal office and place of business at Norfolk, Va.

Respondent Dalton Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office and place of business at Baton Rouge, La.

Respondent King's Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business at Johnson City, Tenn.

Respondent Ogus, Rabinovich & Ogus, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2 Park Avenue, New York, N. Y.

Respondents J. W. Scarbrough and L. Scarbrough are a partnership operating under the firm name of E. M. Scarbrough & Sons, having

its principal office and place of business at Congress Avenue and Sixth Street, Austin, Tex.

The 15 respondents named in this paragraph are hereinafter designated and referred to as "buyer-respondents." Each of said buyer-respondents is engaged in the retail dry goods business, and is a stockholder in the respondent National Modes, Inc. Said buyer-respondents are named as parties respondent both individually and as representatives of a group or class of a large number of retail dry goods concerns, each of whom is likewise a stockholder in respondent National Modes, Inc.

PAR. 6. National Modes, Inc., was organized in August of 1925 by respondent John Block and a group of retail dry goods stores, among which are the buyer-respondents named in paragraph 5, to create and promote the sale of "style" women's dresses and women's wearing apparel under brands, labels, and trade-marks owned and controlled by such retailers and respondent National Modes, Inc., the principal trade-marked labels being "Carolyn" and "Jeanne Barrie."

Respondents, National Modes, Inc., National Modes Holding Corp. and John Block are now, and since the time of the incorporation and organization of National Modes, Inc., and National Modes Holding Corp. have been, engaged in the business of providing purchasing and other services for the buyer-respondents named in paragraph 5 hereof and for other buyers.

In the course and conduct of their business respondents National Modes, Inc., National Modes Holding Corp. and John Block receive orders for women's dresses and women's wearing apparel from the buyer-respondents and other buyers to purchase such products as agents for the buyers and transmit such orders to the seller-respondents and other sellers. As a result of the transmission of said orders by said buyers to respondents National Modes, Inc., National Modes Holding Corp. and John Block, the placing of same by said respondents for or in behalf of said buyers, and the acceptance of said orders by said seller-respondents and other sellers, women's dresses and women's wearing apparel are by each of said seller-respondents and other sellers shipped from the State in which such merchandise is located at the time of sale into and through the various other States of the United States directly to each of said buyer-respondents and to other buyers.

In the course of the buying and selling transactions above set out said seller-respondents since June 19, 1936, have transmitted, paid, and delivered, and do transmit, pay, and deliver to respondents National Modes, Inc., National Modes Holding Corp., and John Block

so-called brokerage fees and commissions or allowances and discounts in lieu of such brokerage fees and commissions, the same being certain percentages of the quoted sales prices agreed upon by said seller-respondents and other sellers with respondents National Modes, Inc., National Modes Holding Corp., and John Block. The three respondents last named since June 19, 1936, have received and accepted and are receiving and accepting such so-called brokerage fees, commissions, or allowances and discounts in lieu thereof upon the purchases of the buyer-respondents and other buyers.

PAR. 7. National Modes, Inc., has divided its stock into three separate classes which are as follows: 50 shares of class A stock of the par value of $100 each, 100 shares of class B stock of the par value of $100 each and 50 shares of class C stock without nominal or par value. Class A and class B stock is owned and can be owned only by retailers of women's dresses and women's wearing apparel. Since the incorporation of both respondents National Modes, Inc., and National Modes Holding Corp., in 1925 respondent John Block has been the sole owner of the class C stock. Class A stock is owned by retailers of women's dresses and women's wearing apparel whose annual business is in excess of $250,000. The class B stock is held by retailers of women's dresses and women's wearing apparel whose annual business is less than $250,000. No more than one share of class A or class B stock may be held by a single retailer for each city in which such retailer conducts a retail dry goods store.

The class A stock is held by approximately 28 retail dry goods stores located in the larger cities of the United States; the class B stock is held by approximately 60 retail dry goods stores located in the larger cities of the United States. No two of such stores are located in the same city. In addition to the stockholder customers of respondent National Modes, Inc., holding the class A and B stock there are approximately 60 retail dry goods stores situated throughout the country which are not stockholders but which purchase their requirements of women's dresses and women's wearing apparel through respondents National Modes, Inc., National Modes Holding Corp., and John Block. Such stores are potential stockholders and are permitted by respondents National Modes, Inc., National Modes Holding Corp., and John Block to participate in the benefits and services rendered by said respondents in the same manner, form, and degree as the stores which are stockholders in respondent National Modes, Inc.

PAR. 8. Immediately upon the organization of respondents National Modes, Inc., and National Modes Holding Corp., a contract was ef-

fected between said respondents and each of the stores having stock in National Modes, Inc. The provisions of said contract are as follows:

Agreement made this _____ day of _____ 19__, by and between National Modes, Inc. (hereinafter called "corporation"), party of the first part, National Modes Holding Corporation (hereinafter sometimes called the "Holding Corporation"), party of the second part, and _____ _____ (hereinafter called the "Stockholder"), party of the third part, Witnesseth:

Whereas, the parties of the first and second part are interested and are cooperating in the creation, acquisition and development of certain trade-marks and trade names, and in the creation and popularization of styles and in the sale of merchandise bearing any such trade-marks or trade names; and

Whereas, the Stockholder is or desires to become a stockholder of such Corporation, and the parties of the first and second part have entered into and may enter into contracts similar to this contract with other stockholders of the corporation;

Now, therefore, in consideration of the premises, of the mutual agreements of the parties, of one dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, the parties do hereby agree as follows:

1. The parties of the first and second part agree to use their best efforts to create and develop said trade-marks and trade names in connection with specialized lines of apparel and other merchandise, to create, use and popularize styles and merchandise in connection with which said trade-marks or trade names are to be used or applied, to choose and designate manufacturers or producers of merchandise bearing said trade-marks or trade names and generally to supervise said manufacture, to advertise nationally such trade-marks and trade names and merchandise bearing the same and to render such other services in connection therewith as they may deem necessary or advisable, to render the name valuable and generally to advance the interests of the Corporation and the Stockholders.

2. The Stockholder is hereby granted the sole and exclusive right to sell merchandise bearing any such trade-marks and/or trade names in the city of _____ and within a radius of _____ miles thereof. Said Stockholder is also to have the right to fill mail orders for any such merchandise.

3. The Stockholder agrees to pay National Modes Holding Corporation a commission upon the net invoice cost of merchandise selected by the Corporation to bear any such trade-marks or trade names purchased by the Stockholder in any fiscal year, said commission to be paid on the tenth day of each month upon invoices bearing the previous month's date as follows:

4% on purchases by the Stockholder on coats, suits, furs, underwear, bags and millinery; and dresses costing over $10.75 each.

3% on purchases by the Stockholder on dresses costing up to and including $10.75.

2% on all purchases of hosiery.

4. The advertising expenses of the Corporation shall be paid from a fund to be subscribed through the payment of one percent (1%) by each stockholder of the net amount of purchases made by the Holding Corporation for the account of such stockholder.

5. The Stockholder agrees that it will not use or apply any such trademark or trade name in connection with any merchandise except such as may have been selected or approved by the Style Committee or Committees of the Corporation and agrees that any merchandise bearing any such trade name or trade-mark will be purchased by said Stockholder only from such sources as may be designated by the Corporation. The Stockholder will place all orders or reorders through the Corporation. The Stockholder agrees further that it will not sell through branches or otherwise any such merchandise in any locality other than the city of _____ and within a radius of _____ miles thereof, except that it may fill mail orders as aforesaid, irrespective of the territory in which any said mail orders may originate.

6. In the event that the Stockholder shall offer for sale any such merchandise below the established price, it must first remove the labels containing any such trade-mark or trade name and in such event such merchandise shall not be advertised or represented as having any connection with any of such trade-marks or trade names.

7. The Stockholder agrees that it will locally advertise and push the sale of the merchandise bearing any such trade-mark or trade name.

8. The Stockholder agrees that it will purchase a minimum amount of such merchandise, to be determined from time to time by the Executive Committee upon a basis which shall be proportioned according to the ready-to-wear volume of the Stockholder or the population of the cities in which the respective Stockholders operate.

9. This agreement shall cease to be operative if and when the Stockholder shall cease to be a Stockholder of the Corporation, except that in such event the stockholder shall not be released from any obligations or liability theretofore incurred hereunder.

10. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the Corporation and of the Stockholder; and shall be binding upon and inure to the benefit of National Modes Holding Corporation or any successor thereof so long as Mr. John Block shall own and continue to own the majority of the capital stock thereof, and so long as he shall continue in the management thereof, and so long as said National Modes Holding Corporation, or its successors, shall engage in no enterprise except in connection with the business of National Modes, Inc.

11. The Stockholder may terminate this agreement by giving to the Corporation at least ninety (90) days' notice in writing of its intention so to do, but such cancellation shall not effect in any way any obligation of the Stockholder theretofore incurred hereunder.

In witness whereof, the parties have executed this agreement the day and year first above mentioned.

NATIONAL MODES, INC.,

By _____

NATIONAL MODES HOLDING CORPORATION,

By _____

(Stockholder)

By _____

Pursuant to the agreement above set forth, respondents National Modes, Inc., National Modes Holding Corp., and John Block receive from the stockholders of National Modes, Inc., being the buyer-re-

spondents herein named, so-called buying fees. The so-called buying fees are paid on a percentage basis and are predicated on the net invoice cost of merchandise, as follows:

1. Two percent of the invoice cost for women's hosiery.

2. Three percent of the invoice cost for women's dresses, coats, suits and other women's wearing apparel which are purchased at a wholesale price of less than $10.75 each.

3. Four percent of the invoice price on women's dresses, coats, suits and other women's wearing apparel which are purchased at a wholesale price of more than $10.75 each.

4. One percent of the invoice price of all purchases made by the buyer-respondents herein named through respondents National Modes, Inc., National Modes Holding Corp., and John Block, for the advertising of brands, labels, and trade-marks owned and controlled by respondent National Modes, Inc.

PAR. 9. At the time the contract above set forth was executed agreements were also executed between National Modes Holding Corp, and retailers of women's dresses and women's wearing apparel not stockholders of the National Modes, Inc. The provisions of such agreements are as follows:

AGREEMENT made this day between NATIONAL MODES HOLDING CORPORATION, of 130 West 31st Street, hereinafter known as the Corporation, and of _____ hereinafter known as the Retailer, for the period of _____ and ending _____.

IT IS UNDERSTOOD that the Retailer shall have the right to publicize and advertise the names of "CAROLYN" and "JEANNE BARRIE" exclusively in the city of _____ for the duration of this contract; and that the name of the Retailer will be listed in all advertisements in national publications run by the Corporation, where there is a listing of retailers names.

THE RETAILER AGREES to take a minimum amount of garments per month, and his orders are herewith attached.

IT IS UNDERSTOOD, however, that at no time will the retailer offer for sale any garment below its agreed advertised price without first removing the label, and thereafter the names of "CAROLYN" or "JEANNE BARRIE" will not be mentioned in connection with the sale or advertising of such garment.

THE RETAILER AGREES to pay monthly to the Corporation 4% of the net purchase price of all garments costing up to and including $10.75, and 5% above $10.75, it being understood that there will be an equal percentage of savings on cost price for the Retailer, effected by the Corporation. This is to apply to all orders as well as reorders shipped to the Retailer. The Retailer agrees to place all orders and reorders through the Corporation's New York Office.

IT IS AGREED that either party to this contract has the right to cancel same at any time before its expiration by giving sixty (60) days written notice, by registered mail, to the other party.

IT IS FURTHER AGREED that matters contained herein, together with the attached order for merchandise, and for copies of the Corporation's mailing brochures, constitute the entire agreement between us.

NATIONAL MODES HOLDING CORP.

Pursuant to the agreement above set forth, nonstockholding retail dry goods stores which purchase merchandise through respondents National Modes, Inc., National Modes Holding Corp. and John Block bearing the brands owned and controlled by respondent National Modes, Inc., pay to respondents National Modes, Inc., National Modes Holding Corp., and John Block, as a so-called buying fee 4 percent on articles of clothing including women's dresses, suits, and coats which are purchased at a wholesale price of less than $10.75 each and 5 percent on such garments which are purchased at a wholesale price of more than $10.75 each.

PAR. 10. Respondents National Modes, Inc., National Modes Holding Corp., and John Block, pursuant to an understanding and agreement between them and the buyer-respondents and other buyers, induce and have induced the seller-respondents herein named and other sellers to allow them on purchases of women's dresses, coats, suits, and other women's wearing apparel made for the retailer-stockholders of National Modes, Inc., and other retailers, a 4 percent lower price on such articles of clothing which wholesale for less than $10.75 each, and at a 5 percent lower price on such articles of clothing which wholesale for more than $10.75 each than said sellers allow to competitors of said retailers. This preferential discount of 4 or 5 percent as the case may be is in some instances paid by the seller-respondents and other sellers direct to the buyer-respondents and to buyers with contracts described in paragraph 9 hereof in the form of a reduced price for the articles of clothing purchased. In other instances, the seller-respondents and other sellers pay directly to respondents National Modes, Inc., National Modes Holding Corp., and John Block a brokerage fee and commission equal to 4 percent of the wholesale price of women's dresses, coats, suits, and other women's wearing apparel costing less than $10.75 each and 5 percent of the wholesale price of such articles of clothing costing in excess of $10.75 each.

Where the 4 or 5 percent allowance or discount in lieu of brokerage is paid directly by the seller-respondents and other sellers to the stockholders of respondent National Modes, Inc., and other retailers, such stockholders and retailers transmit it to respondents National Modes,

Inc., National Modes Holding Corp., and John Block in the form of so-called buying fees. In the instances where the seller-respondents and other sellers pay directly to respondents National Modes, Inc., National Modes Holding Corp., and John Block a brokerage fee and commission or an allowance or discount in lieu thereof in the amount of 4 or 5 percent on the invoice price of women's dresses, coats, suits, and other women's wearing apparel, the buyers are not required to pay so-called buying fees on such purchases.

PAR. 11. On occasion some seller-respondents and other sellers will not allow the discount and allowance to appear as such on the invoices representing purchases by the buyer-respondents and other buyers. On such occasions the buyer-respondents and other buyers are secretly advised by such sellers, when remitting payment for the articles of clothing so purchased, to deduct from the net invoice price the discount or allowance of 4 or 5 percent, as the case may be.

Some seller-respondents and other sellers will not allow the buyers to deduct the discount and allowance when remitting payment for the merchandise so purchased nor do they pay direct to respondents National Modes, Inc., National Modes Holding Corp., and John Block the brokerage fees and commissions on the separate purchases of the respective buyer-respondents and other buyers. However, such seller-respondents and other such sellers do allow respondents National Modes, Inc., National Modes Holding Corp., and John Block to periodically audit their sales records for the purpose of determining the accumulated amounts of brokerage fees and commissions upon the purchases of buyer-respondents and other buyers to the three respondents last named.

Respondents National Modes, Inc., National Modes Holding Corp., and John Block refuse to purchase any merchandise from any sellers who will not allow to them or to the buyer-respondents and other buyers a brokerage fee and commission or a discount or allowance in lieu thereof upon the purchases of the stockholders of National Modes, Inc., or other retailers purchasing through said three respondents.

The brokerage fees and commissions or allowances or discounts in lieu thereof received by respondents National Modes, Inc., National Modes Holding Corp., and John Block, either directly from the seller-respondents and other sellers or indirectly from the seller-respondents and other sellers through the buyer-respondents and other buyers, upon the purchases of the buyer-respondents and other buyers are used by the three respondents, after the payment of operating expenses and the payment of dividends on stock to the stockholders of respond-

ents National Modes, Inc., and National Modes Holding Corp., to perform valuable service and to furnish valuable facilities for and to promote in behalf of the buyer-respondents and other buyers the sale of brands; labels and trade-marks owned and controlled by respondent National Modes, Inc.

PAR. 12. In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees and commissions or allowances and discounts in lieu thereof are paid and transmitted by the seller-respondents and other sellers to and are accepted and received by respondents National Modes, Inc., National Modes Holding Corp., and John Block while said respondents are acting in fact for and in behalf of the buyer-respondents and other buyers and no services whatever have been rendered or are now being rendered in connection with such purchases for or to said seller-respondents and other sellers by the three respondents last named or by said buyer-respondents and other buyers.

The so-called brokerage fees and commissions or discounts and allowances in lieu thereof are paid by the seller-respondents and other sellers to respondents National Modes, Inc., National Modes Holding Corp., and John Block and are transmitted to and received by the buyer-respondents and other buyers in the form of services performed and facilities furnished by said respondents while acting as intermediaries for and in behalf of said buyer-respondents and other buyers.

PAR. 13. The transmission and payment of said so-called brokerage fees and commissions or discounts and allowances in lieu thereof by the seller-respondents and other sellers to respondents National Modes, Inc., National Modes Holding Corp., and John Block upon the purchases of buyer-respondents and other buyers, and the receipt and acceptance thereof by the three respondents last named, or by the buyer-respondents and other buyers in the manner and under the circumstances hereinabove set forth are in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

COUNT II

The Federal Trade Commission, having reason to believe that the parties respondent named in paragraph 1 of count II hereof, since June 19, 1936, have violated and are now violating the provisions of subsection (d) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19,

1936, hereby issues this complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Babs Junior, Inc., Morris W. Haft & Bros., Inc., Shipman & Baker, Inc., Shelton Coat Corp., and Henlo Sportswear, Ltd., as more particularly described in paragraph 4 of count I hereof, are engaged in the business of manufacturing, selling, and distributing women's dresses and women's wearing apparel to numerous buyers including National Modes, Inc., National Modes Holding Corp., John Block and the Buyers named in paragraph 5 of count I hereof. Said respondents sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia and as a result of such sales cause the said products to be shipped and transported from their respective places of business to purchasers thereof who are located in various other States of the United States. There is and has been at all times mentioned herein a continuous course of trade and commerce in women's dresses and women's wearing apparel across State lines between respondents' factories and the purchasers of said products.

Said respondents' enterprises are operated with the ultimate objective of marketing their women's dresses and women's wearing apparel through retail department stores and other retail dry goods establishments to the consuming public in all parts of the United States.

PAR. 2. In the course and conduct of their business as aforesaid the respondents named in paragraph 1 of count II hereof are now and during all the time herein mentioned have been in competition with other corporations and with individuals, partnerships and firms engaged in the business of manufacturing, selling and distributing women's dresses and women's wearing apparel in commerce. Many of said respondents' retail department store customers and dry goods store customers are competitively engaged with each other and with customers of respondents' competitors in the resale of women's dresses and women's wearing apparel within the trading areas in which the respondents' said retailer-customers, respectively, offer for sale and sell the said products purchased from the respondents through National Modes, Inc., National Modes Holding Corp., and John Block.

PAR. 3. In the course and conduct of their business in commerce respondents named in paragraph 1 of count II since June 19, 1936, have secretly paid and agreed to pay to National Modes, Inc., National Modes Holding Corp., John Block and to retailers purchasing women's dresses and women's wearing apparel through them certain sums of

money as compensation for and in consideration of advertising and promotional services furnished by them and by such retailers in connection with the sale and offering for sale of women's dresses and women's wearing apparel under registered trade-marks such as "Carolyn," "Jeanne Barrie," and others. The making of such payments by the respondents named in paragraph 1 of count II hereof was concealed by said respondents from competitors of said National Modes, Inc., National Modes Holding Corp., John Block and from competitors of other buyers purchasing women's dresses and women's wearing apparel from said respondents. Respondents did not make such payments available on proportionally equal terms or on any terms to other purchasing agents and retailers of women's dresses and women's wearing apparel who compete in the sale and distribution of such products purchased from respondents.

PAR. 4. It has been the policy of respondents named in paragraph 1 of count II hereof to conceal from all of their customers, except those favored by respondents, the details of their agreements relating to compensation of customers for services in connection with advertising and promotional facilities. Other customers of respondents are denied knowledge of such allowances and compensation and the respondents have not and do not make it known to any of their customers except their favored ones that they pay compensation for advertising and promotional services in connection with the sale of women's dresses and women's wearing apparel to the consuming public. Respondents have resisted the extension of such allowances to some purchasers of women's dresses and women's wearing apparel even though such purchasers were willing to give advertising and promotional services to respondents in connection with the sale of such women's dresses and women's wearing apparel to the consuming public.

PAR. 5. The above described acts and practices of respondents named in paragraph 1 of count II hereof are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade

Commission, on June 23, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging all of them in count I thereof with violation of the provisions of subsection (c) and some of them in count II thereof with violation of the provisions of subsection (d) of section 2 of the said Clayton Act, as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondents' answers thereto, a written stipulation as to the facts was entered into by and between Everette MacIntyre, Assistant Chief Trial Counsel of the Commission, and each of the respondents except Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.), Henlo Sportswear, Ltd., Babs Junior, Inc., Rubin-Feld, Inc., and Gimbel Bros., Inc., in which it was provided that subject to the approval of the Commission the statement of facts contained therein, which were exclusively in support of and in opposition to the charges in count I of said complaint, may be taken as the facts in this proceeding in lieu of testimony in support of and in opposition to the charges made in both counts of said complaint and that the Commission may proceed upon such statement of facts to make its report stating its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding without the presentation of arguments or the filing of briefs.

Thereafter this proceeding came on for final hearing before the Commission upon the complaint and the stipulations as to the facts, said stipulations having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (*a*) Respondent National Modes, Inc. (sometimes hereinafter referred to as the 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 130 West Thirty-first Street, New York, N. Y.

(*b*) The stockholders of the Corporation are retail women's apparel stores, including buyer respondents, and respondent John Block. The Corporation has owned and controlled the trade-marks and trade names "Carolyn" and "Jeanne Barrie" which have been used to identify women's apparel which has been purchased by Respondent

National Modes Holding Corp. from manufacturers thereof, including seller respondents, as agent for, and for resale so identified by, the stockholders of the Corporation (except Respondent John Block) and other retail women's apparel stores. The Corporation has also advertised such branded apparel so purchased in magazines and periodicals of national circulation and otherwise promoted its resale in the hands of its stockholders and such other retail stores.

PAR. 2. (*a*) Respondent National Modes Holding Corp. (sometimes hereinafter referred to as the Holding 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 also located at 130 West Thirty-first Street, New York, N. Y.

(*b*) The majority of the capital stock of the Holding Corporation is owned or controlled by respondent John Block. Under the terms of contracts hereinafter set forth with the Corporation and the Corporation's stockholders, except Respondent John Block, and of contracts with other retail women's apparel stores (all of which contracting stockholders and retailers are sometimes hereinafter referred to as clients), the Holding Corporation has engaged in the business of purchasing from seller respondents and other sellers women's apparel bearing the trade-marks and trade names owned by the Corporation as agent for, and for resale by its clients and in advertising the branded apparel so purchased in magazines and periodicals of national circulation and otherwise promoting its resale in the hands of its clients.

PAR. 3. (*a*) Respondent John Block is an individual who also has his office and principal place of business located at 130 West Thirty-first Street, New York, N. Y.

(*b*) Said respondent, in addition to being the majority stockholder, is also a director and the president, treasurer, and chief executive officer of the Holding Corporation. As such he determines all of its major questions of policy, but he does not participate in the routine daily transactions which are performed by subordinate employees.

(*c*) Said respondent, in addition to being a stockholder, is also a director and the secretary of the Corporation. He is also the exclusive agent of the Corporation in the consummation of the purposes of that respondent under the terms of a contract hereinafter set forth inuring to the benefit of the Holding Corporation.

(*d*) Respondents National Modes Holding Corp., National Modes, Inc., and John Block are sometimes hereinafter referred to collectively as intermediary respondents.

PAR. 4. (*a*) (1) Respondents Hyman Schreier and Ethel Schreier, his wife, are a partnership operating under the firm name of H. Schreier Co., having its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

(2) Respondent Junior Deb Coat & Suit Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

(3) Respondent Eclipse Knitting Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1410 Broadway, New York, N. Y.

(4) Respondent Morris W. Haft & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

(5) Respondent Grossman & Spiegel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

(6) Respondent Junior Guild Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 847 West Jackson Boulevard, Chicago, Ill.

(7) Respondent Godett & Gross, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 337 South Franklin Street, Chicago, Ill.

(8) Respondent Henry Rosenfeld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

(9) Respondent Fred Perlberg, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

(10) Respondent Shelton Coat Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 230 West Thirty-eighth Street, New York, N. Y.

(11) Respondent Shipman & Baker, Inc , is a corporation organized and existing under and by virtue of the laws of the State of New

York, with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

(B) The 11 respondents above named are hereinafter referred to as seller respondents. Each of them is engaged in the business of manufacturing women's apparel and selling it to (among other buyers) some or all of the buyer respondents and other clients of the Holding Corporation, which makes such purchases as agent for such clients.

(*c*) The Holding Corporation also purchases as agent for its clients from other manufacturers of women's apparel in the same manner as it purchases from seller respondents, but the total number of such manufacturers is so large that it would be manifestly inconvenient and burdensome to join all of them as parties respondent. Seller respondents are, therefore, named as parties respondent both individually and as representative of all manufacturers from whom the Holding Company purchases for its clients.

PAR. 5. (*a*) (1) Respondent Arnold Constable & Co. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 453 Fifth Avenue, New York, N. Y.

(2) Respondent Auerbach Co. is a corporation organized and existing under and by virtue of the laws of the State of Utah with its principal office and place of business at Salt Lake City, Utah.

(3) Respondent Best's Apparel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business at Fifth and Pine Streets, Seattle, Wash.

(4) Respondent Fowler, Dick & Walker is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Wilkes-Barre, Pa.

(5) Respondent Gimbel Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at Thirty-third and Broadway, New York, N. Y., with a branch located at Ninth and Market Streets, Philadelphia, Pa., which branch is referred to in subparagraph (*b*) below.

(6) Respondent Hale Bros. Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at San Francisco, Calif.

(7) Respondent A. Harris & Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Dallas, Tex.

(8) Respondent The Hecht Co. is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at Seventh and F Streets NW., Washington, D. C.

(9) Respondent Popular Dry Goods Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at El Paso, Tex.

(10) Respondent Ames & Brownley, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its principal office and place of business at Norfolk, Va.

(11) Respondent Dalton Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office and place of business at Baton Rouge, La.

(12) Respondent King's, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business at Johnson City, Tenn.

(13) Respondent Ogus, Rabinovich & Ogus, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2 Park Avenue, New York, N. Y.

(14) Respondents J. W. Scarbrough and L. Scarbrough are a partnership operating under the firm name of E. M. Scarbrough & Sons, having its principal office and place of business at Congress Avenue and Sixth Street, Austin, Tex.

(*b*) The 14 respondents above named are hereinafter referred to as buyer respondents. Each of them is a stockholder of the Corporation and engaged in business selling women's apparel at retail, some of which was purchased for it by the Holding Corporation from seller respondents and other sellers, except that buyer respondent Gimbel Bros., Inc., was a stockholder only from February 5, 1938, to July 13, 1944.

(*c*) Buyer respondents are not all of the stockholders or former stockholders of the Corporation for whom the Holding Corporation has purchased in the same manner as for buyer respondents, but the total number of such stockholders is so large that it would be manifestly inconvenient and burdensome to join all of them as parties respondent. Buyer respondents are, therefore, named as parties respondent both individually and as representative of all of the stockholders of the Corporation.

PAR. 6. (*a*) The corporation was organized in August 1925 by Respondent John Block and representatives of a group of women's apparel retailers, among which were buyer respondents Best's Apparel, Inc., Popular Dry Goods Co., and E. M. Scarbrough & Sons, to engage in group buying and promotion of the resale of women's apparel bearing the trade-marks and trade names owned and controlled by the Corporation such as "Carolyn" and "Jeanne Barrie," and to facilitate such purposes by the acts and practices herein found.

(*b*) The Corporation has three classes of capital stock, namely, class A, of which there are 50 shares with a par value of $100 each; class B, of which there are 100 shares with a par value of $100 each; and class C, of which there are 50 shares without par value. All of class C stock is now and has been since the formation of the Corporation owned or controlled by Respondent John Block. Class A and class B stock is and can be owned only by retailers of women's apparel, class A being limited to such retailers whose annual volume of business in the ready-to-wear department is in excess of $250,000, and class B being limited to such retailers whose annual volume of business in the ready-to-wear department is less than $250,000. Class A stock is owned by approximately 28 retail women's apparel stores, including some buyer respondents, and class B stock is owned by approximately 46 such stores, including some buyer respondents. All of such stores are located in the larger cities of the United States, and no two of such stores are located in the same city. No retailer may own more than one share of class A or class B stock for each city in which such retailer operates a store.

PAR. 7. (*a*) Immediately after the organization of the Corporation, it entered into the following agreement with respondent John Block:

AGREEMENT made this 17th day of August, 1925, by and between NATIONAL MODES, INC. (hereinafter called the "Corporation"), party of the first party, and JOHN BLOCK (hereinafter called "Mr. Block") party of the second part, WITNESSETH:

In consideration of the mutual agreements of the parties, of one dollar and other good and valuable considerations, by each party to the other in hand paid, receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. The parties agree to cooperate in creating, acquiring and developing trade-marks and trade names, and in procuring the sale of merchandise, bearing the same, in advertising nationally said trade-marks and trade names and merchandise bearing the same, and in the creation and popularization of styles in connection therewith, and generally to foster the interests of the stockholders of the Corporation.

2. The Corporation shall own such trade-marks and trade names.

3. The Corporation agrees to appoint and hereby does appoint Mr. Block its exclusive agent in the consummation of the aforesaid purposes, and in charge of the general management of the proposed plan and business upon the terms and conditions hereinafter set forth.

4. Organization expenses of the Corporation, corporate taxes of every kind, expenses in connection with procuring and protecting the trade-marks and trade names of the Corporation. advertising expenses, and such other expenses as the Board of Directors may from time to time designate shall be borne by the Corporation. All other expenses in connection with the accomplishment of the aforesaid purposes shall be borne and paid by the party of the second part.

5. The parties hereto shall enter into an agreement with each stockholder of the Corporation substantially in the form annexed hereto, marked "B", and made a part hereof.

6. Upon the vote or written consent of three-fourths of the Class A stockholders of the Corporation, this contract may be cancelled by the Corporation. In the event of such cancellation by the Corporation, or upon the death or incapacity of Mr. Block, the Corporation may at its option purchase from Mr. Block, or his estate, or his successor, as the case may be, the shares of Class C stock of the Corporation owned by him, his estate, or successor, as aforesaid, and shall pay therefor a sum equal to fifty percent (50%) of such portion of the fair value of the business, property, assets and good-will of said Corporation, as shall exceed the aggregate amount that shall have been paid into the Corporation by the Class A and Class B stockholders for their stock. If the parties concerned cannot agree upon the fair value of such property, assets, business and good-will, the same shall be determined by a majority of the Board of Directors of the Corporation. Payment of the amount so fixed shall be made within one year after such cancellation, death or incapacity.

7. In the event that the party of the second part shall desire to retire from the enterprise, he shall offer in writing to surrender to the Corporation all of his rights hereunder at a price to be determined as hereinbefore set forth in the case of cancellation hereof, or the death or incapacity of the party of the second part. If the Corporation desires to purchase said rights at the price so determined, it shall signify its willingness so to do by written notice to such effect mailed or delivered to Mr. Block or his legal representatives or successor, within sixty (60) days after such offer shall have been received by the Corporation, and payment in such case shall be made within one year from the date of the receipt of such offer. Upon such payment to the party of the second part, in any of the events above specified, he or his legal representative or representatives or successor will redeliver to the Corporation the shares of Class C stock thereof owned by him, said representative or representatives or successor, and this contract will be of no further force or effect and the agency granted hereunder shall thereupon terminate.

8. This contract shall be binding upon and inure to the benefit of the successors and assigns of the Corporation, of Mr. Block or any holding corporation which he may organize or cause to be organized, and in which and so long as he shall own and continue to own a majority of the capital stock thereof, and so long as he shall continue in the management thereof, provided, however, that any such corporation that Mr. Block may organize or cause to be organized shall be subject to the approval of the Board of Directors of National Modes,

Inc., and shall engage in no enterprise except in connection with the business of National Modes, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the day and year first above mentioned.

NATIONAL MODES, INC.
(Signed) WILLIAM B. THALHEIMER (*pres.*)
(Signed) JOHN BLOCK (*L. S.*)

(*b*) Pursuant to the terms of paragraph numbered 8 of said contract and shortly after its execution, respondent John Block organized or caused to be organized respondent National Modes Holding Corp., with himself as majority stockholder, a director, the president, and chief executive officer.

PAR. 8. (*a*) After the organization of the Holding Corporation and pursuant to paragraph numbered 5 in the agreement set forth in paragraph 7 (*a*), the Corporation and the Holding Corporation entered into contracts with each of the stockholders of the Corporation, except respondent John Block.

(*b*) The provisions of said contracts were substantially as follows:

AGREEMENT made this _____ day of _____ 19____, by and between NATIONAL MODES, INC. (hereinafter called the "Corporation"), party of the first part, NATIONAL MODES HOLDING CORPORATION (hereinafter sometimes called the "Holding Corporation"), party of the second part, and _____ (hereinafter called the "Stockholder,"), party of the third part, WITNESSETH:

WHEREAS, the parties of the first and second part are interested and are cooperating in the creation, acquisition and development of certain trade-marks and trade names, and in the creation and popularization of styles and in the sale of merchandise bearing any such trade-marks or trade names; and

WHEREAS, the Stockholder is or desires to become a stockholder of such corporation, and the parties of the first and second part have entered into and may enter into contracts similar to this contract with other stockholders of the Corporation:

NOW, THEREFORE, in consideration of the premises, of the mutual agreements of the parties, of one dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, the parties do hereby agree as follows:

1. The parties of the first and second part agree to use their best efforts to create and develop said trade-marks and trade names in connection with specialized lines of apparel and other merchandise, to create, use and popularize styles and merchandise in connection with which said trade-marks or trade names are to be used or applied, to choose and designate manufacturers or producers of merchandise bearing said trade-marks or trade names and generally to supervise said manufacture, to advertise nationally such trade-marks and trade names and merchandise bearing the same and to render such other services in connection therewith as they may deem necessary or advisable, to render the same valuable, and generally to advance the interests of the Corporation and the Stockholders.

2. The Stockholder is hereby granted the sole and exclusive right to sell merchandise bearing any such trade-mark and/or trade names in city of ---------- and within a radius of ---------- miles thereof. Said Stockholder is also to have the right to fill mail orders for any such merchandise.

3. The Stockholder agrees to pay National Modes Holding Corporation a commission upon the net invoice cost of merchandise selected by the Corporation to bear any such trade-marks or trade names purchased by the Stockholder in any fiscal year, said commission to be paid on the tenth day of each month upon invoices bearing the previous month's date as follows:

4% on purchases by the Stockholder on coats, suits, furs, underwear, bags and millinery; and dresses costing over $10.75 each.

3% on purchases by the Stockholder on dresses costing up to and including $10.75.

2% on all purchases of hosiery.

4. The advertising expenses of the Corporation shall be paid from a fund to be subscribed to through the payment of one percent (1%) by each stockholder of the net amount of purchases made by the Holding Corporation for the account of such stockholder.

5. The Stockholder agrees that it will not use or apply any such trade-mark or trade name in connection with any merchandise except such as may have been selected or approved by the Style Committees of the Corporation and agrees that any merchandise bearing any such trade name or trade-mark will be purchased by said Stockholder only from such sources as may be designated by the Corporation. The Stockholder will place all orders or reorders through the Corporation. The Stockholder agrees further that it will not sell through branches or otherwise any such merchandise in any locality other than the city of ---------- and within a radius of ---------- miles thereof, except that it may fill mail orders as aforesaid, irrespective of the territory in which any said mail orders may originate.

6. In the event that the Stockholders shall offer for sale any such merchandise below the established price, it must first remove the labels containing any such trade-mark or trade name and in such event such merchandise shall not be advertised or represented as having any connection with any of such trade-marks or trade names.

7. The Stockholder agrees that it will locally advertise and push the sale of the merchandise bearing any such trade-mark or trade name.

8. The Stockholder agrees that it will purchase a minimum amount of such merchandise, to be determined from time to time by the Executive Committee upon a basis which shall be proportioned according to the ready-to-wear volume of the Stockholder or the population of the cities in which the respective Stockholders operate.

9. This agreement shall cease to be operative if and when the Stockholder shall cease to be a Stockholder of the Corporation, except that in such event the Stockholder shall not be released from any obligations or liability theretofore incurred hereunder.

10. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the Corporation and of the Stockholder; and shall be binding upon and inure to the benefit of National Modes Holding Corporation or any successor thereof so long as Mr. John Block shall own and continue to own the

majority of the capital stock thereof, and so long as he shall continue in the management thereof, and so long as said National Modes Holding Corporation, or its successors, shall engage in no enterprise except in connection with the business of National Modes, Inc.

11. The Stockholder may terminate this agreement by giving to the Corporation at least ninety (90) days' notice in writing of its intention so to do, but such cancellation shall not effect in any way any obligation of the Stockholder theretofore incurred hereunder.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above mentioned.

NATIONAL MODES, INC.

By _____

NATIONAL MODES HOLDING-CORPORATION,

By _____

(Stockholder)

By _____

(*c*) The percentages of purchases to be paid as fees to the Holding Corporation, set forth in paragraph numbered 3 of the above agreement, have been changed from time to time. As originally fixed and as subsequently changed they have been paid to the Holding Corporation except as alleged in paragraph 11. Such fees are sometimes hereinafter referred to as contract service fees.

PAR. 9. (*a*) Beginning in 1937 and from time to time thereafter, with the consent of the Corporation and its stockholders, the Holding Corporation entered into agreements with approximately 60 retailers of women's apparel, located in the several States, not stockholders of the Corporation, under the terms and in the performance of which such retailers (herein sometimes referred to as clients) participated in and benefited from the acts and practices herein set forth in the same manner, form, and degree as buyer respondents and other stockholders of the Corporation.

(*b*) Said contracts provided substantially as follows:

AGREEMENT made this day between NATIONAL MODES HOLDING CORPORATION, of 130 West 31st Street, hereinafter known as the Corporation, and _____ of _____, hereinafter known as the Retailer, for the period of _____ and ending _____.

1. IT IS UNDERSTOOD that the Retailer shall have the right to publicize and advertise the names of "CAROLYN" and "JEANNE BARRIE" exclusively in the city of _____ for the duration of this contract; and that the name of the Retailer will be listed in all advertisements in national publications run by the Corporation, where there is a listing of retailers' names.

2. THE RETAILER AGREES to take a minimum amount of garments per month, and his orders are herewith attached.

3. IT IS UNDERSTOOD, however, that at no time will the retailer offer for sale any garment below its agreed advertised price without first removing the

label, and thereafter the names of "CAROLYN" or "JEANNE BARRIE" will not be mentioned in connection with the sale or advertising of such garment.

4. THE RETAILER AGREES to pay monthly to the Corporation 4% of the net purchase price of all garments costing up to and including $10.75, and 5% above $10.75, it being understood that there will be an equal percentage of savings on cost price for the Retailer, effected by the Corporation. This is to apply to all orders as well as reorders shipped to the Retailer. The Retailer agrees to place all orders and reorders through the Corporation's New York office.

5. IT IS AGREED that either party to this contract has the right to cancel same at any time before its expiration by giving sixty (60) days written notice by registered mail, to the other party.

6. IT IS FURTHER AGREED that matters contained herein, together with the attached order for merchandise, and for copies of the Corporation's mailing brochures, constitute the entire agreement between us.

NATIONAL MODES HOLDING CORPORATION,

(Retailer)

(*c*) The percentages of purchases to be paid as fees to the Holding Corporation, set forth in paragraph numbered 4 of the above agreement, have been changed from time to time, and were at all times substantially the same as the sum of the percentages of purchases to be paid as fees to the Holding Corporation by stockholders of the Corporation provided for in paragraph numbered 3, plus the one percent of purchases to be paid toward the cost of advertising to the Corporation provided for in paragraph numbered 4, in the agreement set forth in paragraph 8 (*b*). As originally fixed and as subsequently changed they have been paid to the Holding Corporation except as alleged in paragraph 11. Such fees are sometimes hereinafter referred to as contract service fees.

PAR. 10. Respondents have engaged in business pursuant to and in accordance with the contracts hereinabove set forth since the execution thereof and until the present time. In the course and conduct of such business, the Holding Corporation in the State of New York has solicited and received purchase orders for women's apparel, to bear the trade-marks and trade names owned by the Corporation, from its clients located in the several States directly from such clients and through the Corporation. The Holding Corporation has transmitted such orders to and has purchased from seller respondents and other sellers, located in the several States, the women's apparel so ordered; and such sellers have shipped and caused to be transported the women's apparel so purchased, sold, and marked from the States in which they were located into and through other States directly to the clients of the Holding Corporation.

PAR. 11. (*a*) Respondents engaged in one of the three following acts and practices in connection with most of such purchase and sales transactions in interstate commerce from June 19, 1936 until 1942, and thereafter and continuing until the present time in connection with fewer but many of such transactions:

(1) Seller respondents and other sellers have paid to the Holding Corporation, and the Holding Corporation has received and accepted, sums of money equal to or substantially equal to contract service fees. In some instances such payments were made by checks drawn by such sellers to the order of and sent directly to the Holding Corporation, and in other instances by checks drawn to the order of and sent directly to the Corporation, which endorsed and transmitted them to the Holding Corporation. Where such payments were thus made, the Holding Corporation waived payment of its contract service fees from clients by noting on purchase memoranda sent to them that the apparel purchased was "billed at show-room price—hence no service fee," and clients paid such sellers the full invoice price.

(2) Seller respondents and other sellers have granted to the Holding Corporation or to the Corporaton, and the Holding Corporation and the Corporation have received and accepted allowances designated on their records as allowances to advertise the apparel purchased. Such allowances were granted by checks drawn by such sellers to the order of an advertising agency of the Holding Corporation and the Corporation which agency credited the sums so received to the account of or for the benefit of one or the other of said respondents. Such credits were not used by said respondents, in some instances, in whole, and in other instances, in part, to advertise the apparel purchased from the sellers making the grant; and to the extent that such credits were not used to advertise the apparel purchased from the seller making the grant, such allowances were equal to or approximately equal to and in lieu of the payments made to the Holding Corporation or the Corporation as set forth in subparagraph (*a*) (1) of this paragraph. Where such allowances were thus granted, the Holding Corporation waived payment of its contract service fees from clients by noting on purchase memoranda sent to them that the apparel purchased was "billed at show-room price—hence no service fee," and clients paid such sellers the full invoice price.

(3) Seller respondents and other sellers have granted to buyer respondents and and other clients of the Holding Corporation, and such clients have received and accepted, discounts or allowances equal to or substantially equal to and in lieu of the payments made to the

Holding Corporation or the Corporation as set forth in subparagraph (*a*) (1) of this paragraph. In some instances such discounts or allowances were shown on the face of the invoice as a percentage to be deducted from the invoice price. In other instances, they were not so shown, but, under an agreement or understanding between the Holding Corporation and such sellers, the latter invoiced clients at the gross price and the Holding Corporation informed its clients, by memoranda which showed sellers, dates, and invoice prices, that the invoice prices were to be paid "less 25 cents each overcharge," "less 12½ cents each overcharge," and similar entries. Where such discounts and allowances were thus granted, clients deducted the discount or allowance or the "overcharge" and paid sellers the lower net price, and the Holding Corporation collected its contract service fees from clients.

(*b*) From 1942 until the present time (during which period women's apparel was in short supply) in connection with those of such transactions in which respondents did not engage in one of the three acts and practices as set forth in subparagraph (*a*) above, respondents so engaged as set forth in said subparagraph except that:

(1) In some instances the amounts of such payments or grants made by seller respondents and other sellers were less than, often less than one-half of, such contract service fees; and, where such instances were transactions of the kinds set forth in subparagraphs (*a*) (1) and (*a*) (2) above, the Holding Corporation waived such contract service fees only to the extent of such payments or grants and such contract service fees were paid to the Holding Corporation by its clients to the extent that they were not waived; and, where such instances were transactions of the kind set forth in subparagraph (*a*) (3) above, such contract service fees were paid in full to the Holding Corporation; and

(2) In other instances seller respondents and other sellers made no such payments or grants and such contract service fees were paid in full to the Holding Corporation by its clients.

(*c*) In connection with all such purchase and sales transactions the Holding Corporation, the Corporation, and Respondent John Block were agents, representatives, or intermediaries acting in fact for or in behalf or subject to the direct or indirect control of buyer respondents and other clients; and such intermediary respondents were exclusively engaged in rendering and furnishing to such clients purchasing and other valuable services and facilities which promoted the resale of the apparel purchased. Such services and facilities were paid for by the payments and discounts and allowances in lieu thereof which were

paid and granted and received and accepted as hereinabove set forth. Such payments and grants, being so used, were all transmitted to buyer respondents and other clients in the form of such services and facilities.

PAR. 12. Buyer respondent Gimbel Bros., Inc., failed and refused to enter into a stipulation as to the facts for the stated reason that it ceased being a stockholder in respondent National Modes, Inc., prior to the issuance of the complaint herein.

Seller respondents, Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.), Henlo Sportswear, Ltd., Babs Junior, Inc., and Rubin-Feld, Inc., were legally dissolved prior to the issuance of the complaint herein.

CONCLUSION

The paying and granting of commissions, or fees, or discounts or allowances in lieu thereof, by the seller respondents to the intermediary respondents and the buyer respondents and others; the receiving and accepting thereof by the intermediary respondents and the buyer respondents and others from the seller respondents and others and the transmitting thereof by the intermediary respondents to the buyer respondents and others, in the manner and under the circumstances hereinabove found, constitute violations of subsection (c) of section 2 of the Clayton Act, as amended.

The reasons given by respondent Gimbel Bros., Inc., for its failure and refusal to enter into a stipulation as to the facts do not constitute sufficient grounds for dismissal of the complaint against that respondent in its capacity as a respondent herein by virtue of its being a member of a class consisting of past, present, and future stockholders in any of the intermediary respondents, as represented by the named buyer respondents. However, to continue this proceeding against Gimbel Bros., Inc., as a named party respondent would further extend the time in which all of the respondents might participate in the illegal practices.

The record contains no evidence in support of or in opposition to the charges that some of the respondents herein violated subsection (d) of section 2 of the Clayton Act, as amended, contained in count II of the complaint, and no findings with respect thereto have been made.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, stipulation as to the facts executed by and between Everette

MacIntyre, Assistant Chief Trial Counsel of the Commission, and each of the respondents except Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.), Henlo Sportswear, Ltd., Babs Junior, Inc., Rubin-Feld, Inc., and Gimbel Bros., Inc., in which it was provided, among other things, that subject to the approval of the Commission the statement of facts contained therein, which were exclusively in support of and in opposition to the charges in Count I of said complaint, may be taken as the facts in this proceeding in lieu of all testimony in support of and in opposition to the charges made in both counts of said complaint and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding, without the presentation of arguments or the filing of briefs; and the Commission having approved each said stipulation as to the facts and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

(1) *It is ordered*, That the seller respondents Hyman Schreier and Ethel Schreier, individually and partners trading as H. Schreier Co., or trading under any other name, and their respective agents, representatives, and employees, and Junior Deb Coat & Suit Co., Inc., Eclipse Knitting Mills, Inc., Morris W. Haft & Bros., Inc., Grossman & Spiegel, Inc., Junior Guild Frocks, Inc., Godett & Gross, Inc., Henry Rosenfeld, Inc., Fred Perlberg, Inc., Shelton Coat Corp., and Shipman & Baker, Inc., corporations, and their respective officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the sale of women's wearing apparel and accessories, or other merchandise, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting to any buyer, or to any agent, representative, or other intermediary acting for or in behalf, or subject to the direct or indirect control of any such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, on sales for such buyer's own account.

(2) *It is further ordered*, That the intermediary respondents National Modes, Inc., National Modes Holding Corp., corporations, their

officers, directors, agents, representatives, and employees, and John Block, individually, and his agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the purchase of women's wearing apparel and accessories, or other merchandise, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase in connection with which such intermediary respondent acts for, or in behalf, or subject to the direct or indirect control of the buyer.

(*b*) Transmitting, paying, or granting, directly or indirectly, in the form of money or credits or in the form of services or benefits provided or furnished, or otherwise, to any buyer any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, received on such buyer's purchases.

(3) *It is further ordered*, That the buyer respondents Arnold Constable & Co., Auerbach Co., Best's Apparel, Inc., Fowler, Dick & Walker, Hale Bros. Stores, Inc., A. Harris & Co., The Hecht Co., Popular Dry Goods Co., Ames & Brownley, Inc., Dalton Co., King's Inc., and Ogus, Rabinovich & Ogus, Inc., corporations, their respective officers, directors, agents, representatives, and employees, and J. W. Scarbrough and L. Scarbrough, individually and partners trading as E. M. Scarbrough & Sons, or trading under any other name, their agents, representatives, and employees, and all other past, present, or future stockholders in any of the intermediary respondents named in paragraph (2) hereof, and their officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the purchase of women's wearing apparel and accessories, or other merchandise, in commerce as "commerce" is defined in the Clayton Act., do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for or in behalf or subject to the direct or indirect control of said buyer respondents, in the form of money or credits or in the form of services or benefits provided or furnished, or otherwise, any commission, brokerage, or other compensation, or allowance or discount in lieu thereof, upon purchases for their own accounts.

(4) *It is further ordered*, That the complaint herein as to Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.),

Henlo Sportswear, Ltd., Babs Junior, Inc., and Rubin-Feld, Inc., be, and the same hereby is, dismissed.

(5) *It is further ordered*, That the complaint herein as to Gimbel Bros., Inc., a corporation, in its capacity as a named party respondent herein (but not in its capacity as a respondent herein by virtue of its being a member of a class consisting of past, present, and future stockholders in any of the intermediary respondents named in paragraph (2) hereof, which class is represented by the buyer respondents named in paragraph (3) hereof), be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute such further proceedings as may be warranted by the facts.

(6) *It is further ordered*, That the charges in count II of the complaint herein be, and the same hereby are, dismissed.

(7) *It is further ordered*, That each of the respondents herein except those as to whom the complaint is dismissed, shall, within 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.

Syllabus

IN THE MATTER OF

THE LARSEN COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATIONS OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5623. Complaint, Nov. 26, 1948—Decision, Feb. 6, 1950

In a proceeding in which it was alleged that respondents paid commissions or allowances upon or in connection with sales made to buyers for their own accounts, and in which it appeared that the sellers made use of so-called consignment contracts or agreements under which the consignee or purchaser made advances, usually 80 percent of the purchase price, upon receipt of the products or within 10 days thereafter, and paid the balance due after he resold it, said purchaser's use of said so-called consignment contract or agreement obviously did not change the real nature of the transaction involved.

Where a corporation engaged in packing, canning, and selling canned fruits and vegetables to buyers in various sections of the United States and the Territory of Hawaii, and two officers thereof and substantial stockholders, who exercised a substantial degree of authority and control over its business; distributing and selling some of their products under their own brands and labels, or those of the particular buyer concerned, through intermediaries or brokers who acted as their agents in negotiating the sale thereof, and were compensated by their brokerage fees or commissions, and were not traders for profit and had no further financial interest in the products sold—

Paid also, directly or indirectly, commissions or brokerage fees on substantial sales of its said products—either unlabeled or under the buyers' labels or brands—directly to buyers who purchased in their own names and for their own accounts, and made use, in said connection, of so-called consignment contracts or agreements under which the food products were purportedly consigned to the particular purchaser, and advances, usually 80 percent of the purchase price, were made to said sellers by said purchaser upon receipt thereof or within 10 days thereafter, and balance due was paid after purchaser's resale thereof:

Held, That the paying and granting of such commissions or brokerage fees to purchasers of food products on purchases for their own accounts, as above set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended.

In said proceeding in which it appeared that two other officers, namely, the vice president and the treasurer of said corporation, had also been joined as respondents, but did not, as alleged in the complaint, exercise a substantial degree of authority and control over its distribution and sales policies: the Commission was of the view that the complaint should be dismissed as to said individuals.

Mr. Cecil G. Miles for the Commission.

Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondent.

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 since June 19, 1936, violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 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 Larsen Co. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at 314 North Broadway, Green Bay, Wis. The respondent corporation is engaged in the business of packing, canning, and selling canned fruits and vegetables (all of which are hereinafter designated as food products). Respondent corporation is a substantial factor in the distribution and sale of food products. Such sales are made to buyers located in various sections of the United States and the Territory of Hawaii.

PAR. 2. Respondent R. E. Lambeau is an individual with his principal office and place of business located at 314 North Broadway, Green Bay, Wis. He is now president of Larsen Co. and has been a substantial stockholder and an officer in said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as president, respondent R. E. Lambeau has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent C. Sumner Larsen is an individual with his principal office and place of business located at 314 North Broadway, Green Bay, Wis. He is now vice president of the Larsen Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as vice president, respondent C. Sumner Larsen has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 4. Respondent Donald F. Larsen is an individual with his principal office and place of business located at 314 North Broadway, Green Bay, Wis. He is now secretary of the Larsen Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as secretary, respondent Donald F.

Larsen has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 5. Respondent R. H. Winter is an individual with his principal office and place of business located at 314 North Broadway, Green Bay, Wis. He is now treasurer of the Larsen Co. and has been a substantial stockholder of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as treasurer, respondent R. H. Winter has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 6. Respondents, and each of them, through said respondent corporation, for a substantial period of time since June 19, 1936, have sold and distributed their food products in commerce, namely, through brokers to buyers; and directly to buyers, including a substantial quantity of such food products to a direct buyer, namely, Taylor & Sledd, Inc., of Richmond, Va.

The respondents sell and distribute their food products by two separate and distinct methods, described as follows:

(*a*) The first and principal method is by utilizing intermediaries or brokers who act as respondents' agents in negotiating the sale of respondents' food products, at respondents' prices, and on respondents' terms. Such intermediaries or brokers transmit such purchase orders to respondents who thereafter invoice or ship the food products to the customers. The respondents pay such intermediaries or brokers for their services in negotiating and making such sales, for respondents' account, commission or brokerage fees, which are customarily based on a percentage of the invoice sales prices of the food products sold.

The food products so sold by brokers bear the brand or label of the respondents, or the brands or labels of the buyers to whom respondents sell through such brokers. Therefore, none of the good will established by the products accrues to the intermediaries or brokers. Such intermediaries or brokers are not traders for profit and do not take title to or have any financial interest in the products sold, and neither make a profit nor suffer a loss on the transaction.

In a few or relatively few transactions since June 19, 1936, Taylor & Sledd, Inc., has acted as respondents' sales agent or broker, negotiating the sale of respondents' food products for and on account of the seller as principal.

This part of respondents' business is not challenged by the complaint herein.

(*b*) The second method, which is challenged herein, is respondents' sales of its food products directly to buyers. Representative of such buyers is Taylor & Sledd, Inc., of Richmond, Va., to whom respondents pay, directly or indirectly, commissions or brokerage fees on such sales of food products purchased by such buyers, including the said Taylor & Sledd, Inc., in their own names and for their own accounts. The respondents sell a substantial quantity of their food products to such buyers either unlabeled or under one or more of the labels or brands of said buyers.

PAR. 7. The respondents pack and sell all, or substantially all, of their food products bearing a printed label upon which one of their own, or their buyers' trade-marks, consisting of a distinctive word, emblem, or symbol, or a combination of any of these, are shown. Such labels are utilized as brands and are attached to such food products at respondents' direction for the purpose of consumers identifying such commodities as the food products of the owner of the brands so that repeat sales may be centered upon such brands.

A brand trade-mark, or trade name, as used herein, is defined as a symbol of business good will. Good-will, as used herein, is defined as an attitude of consumers which causes them to patronize a certain place or person, or to purchase a definite food product. Upon the brand used depends to whom the good will created by the food products accrues. Thus, when respondents sell food products which bear their own brand, good will accrues to them, whereas when they pack and sell their food products under the brand of another, the good will accrues not to the respondents but to the owner of the particular brand. That such is the purpose and effect of the use of brands is well known in the industry and generally.

The respondents' food products are sold and distributed under two distinct brand classifications, namely and principally (*a*) packer's or seller's brand; and (*b*) private or distributor's brand.

A packer's or seller's brand may be defined as a brand owned and controlled by the original seller and, as referred to herein, designates the brands owned and utilized by the respondent sellers in the promotion and sale of their products, which brands identify the particular product for which they assume the responsibility all the way through the channels of distribution to the consumer, and whatever good-will is established thereby accrues to the original sellers which in this instance are the respondents named in the caption hereof.

A private brand may be defined as a brand owned and controlled by other than the original seller and, as referred to herein, designates brands utilized by the buyers as distinguished from the original seller

and which brands identify the food products with the buyers, and permits such buyers to promote the sale of these food products independently of the manufacturers or sellers. Under such arrangement the buyers as distributors, rather than the manufacturer as packer or original seller, assume the responsibility all the way through the channels of distribution to the consumer, and whatever good will is established accrues to such buyers and not to the original seller. The buyers determine the sales and price policies with reference to the distribution of such food products for their own accounts, and make a profit or suffer a loss as the case may be.

PAR. 8. The respondents, and each of them, for a substantial period of time since June 19, 1936, and since the enactment of the Robinson-Patman Act, for the purpose of masking their operations so as to impart a color of legality to the brokerage payments made to one of their buyers, Taylor & Sledd, Inc., on its purchases of food products, have entered into a so-called "consignment contract or agreement," originated and promulgated by said buyer. Under the provisions of this so-called "consignment contract or agreement" the food products respondents sell in commerce are alleged to be consigned, and advances, usually 80 percent of the purchase price, are made to respondents by the purchaser, Taylor & Sledd, Inc., upon receipt of the food products, or within 10 days after such food products are received from the respondents. The balance due is paid after the food products are resold by Taylor & Sledd, Inc., to its customers.

PAR. 9. The respondents in the course and conduct of their said business have, since June 19, 1936, sold and distributed a substantial portion of their food products in commerce directly to buyers, including said Taylor & Sledd, Inc. Said buyers are located in States other than the State in which the respondents are located; and as a result of said sales and the respondents' instructions, such food products have been shipped and transported across State lines by respondents to said buyers, or to said buyers' customers.

PAR. 10. The respondents, since June 19, 1936, in connection with the interstate sale and distribution of food products have been and are now paying, or have paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowances, or discounts in lieu thereof, to buyers who purchased said food products in commerce, in their own names and for their own accounts for resale.

PAR. 11. The acts and practices of the respondents, and each of them, in promoting the interstate sale of their food products since June 19, 1936, by paying or granting buyers commissions, brokerage, or other compensation or allowances, or discounts in lieu thereof, by

the second method set forth in paragraph 6 herein, are in violation of subsection (c) of section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission on November 26, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act as amended. On January 25, 1949, the respondents filed their answer in which they denied the material allegations of the complaint, but on February 21, 1949, they filed a motion for leave to withdraw said original answer and to file in lieu thereof a substitute answer in which they admit, with certain qualifications, all of the material allegations of fact contained in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission, by order entered herein on August 3, 1949, granted said motion. The filing of the substitute answer having been made with the understanding that if this proceeding were not disposed of by the issuance of a form of order to cease and desist attached thereto and recommended by the respondents, the respondents reserved to themselves the right to file written briefs and present oral argument as to the form of order which should be issued; and said proposed form of order having been altered by the Commission to the extent and for the reasons shown in the tentative order to cease and desist entered August 3, 1949, the respondents were afforded opportunity to show cause why said tentative order should not be entered herein as an order to cease and desist. The respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final hearing before the Commission upon the complaint and the substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent the Larsen Co. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at 314 North Broadway, Green

Bay, Wis. The respondent corporation is engaged in the business of packing, canning, and selling canned fruits and vegetables (all of which are hereinafter designated as "food products"). Respondent corporation is a substantial factor in the distribution and sale of food products. Such sales are made to buyers located in various sections of the United States and the Territory of Hawaii.

PAR. 2. Respondent R. E. Lambeau is an individual with his principal office and place of business located at 314 North Broadway, Green Bay, Wis. He is now president of the Larsen Co. and has been a substantial stockholder and an officer in said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as president, respondent R. E. Lambeau has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent Donald F. Larsen is an individual with his principal office and place of business located at 314 North Broadway, Green Bay, Wis. He is now secretary of the Larsen Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as secretary, respondent Donald F. Larsen has exercised. and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 4. Respondents, and each of them, through said respondent corporation, for a substantial period of time since June 19, 1936, have sold and distributed their food products in commerce, namely, through brokers to buyers; and directly to puyers, including a substantial quantity of such food products to a direct buyer, namely, Taylor & Sledd, Inc., of Richmond, Va.

The respondents sell and distribute their food products by two separate and distinct methods, described as follows:

(*a*) The first and principal method is by utilizing intermediaries or brokers who act as respondents' agents in negotiating the sale of respondents' food products, at respondents' prices, and on respondents' terms. Such intermediaries or brokers transmit such purchase orders to respondents who thereafter invoice or ship the food products to the customers. The respondents pay such intermediaries or brokers for their services in negotiating and making such sales, for respondents' account, commissions or brokerage fees, which are customarily based on a percentage of the invoice sales prices of the food products sold.

The food products so sold by brokers bear the brand or label of the respondents, or the brands or labels of the buyers to whom respondents sell through such brokers. Such intermediaries or brokers are not traders for profit and do not take title to or have any financial interest in the products sold, and neither make a profit nor suffer a loss on the transaction.

In a few or relatively few transactions since June 19, 1936, Taylor & Sledd, Inc., has acted as respondents' sales agent or broker, negotiating the sale of respondents' food products for and on account of the seller as principal.

This part of respondents' business was not challenged by the complaint herein.

(*b*) The second method, which was challenged by the complaint herein, is respondents' sales of its food products directly to buyers. Representative of such buyers is Taylor & Sledd, Inc., of Richmond, Va., to whom respondents pay, directly or indirectly, commissions or brokerage fees on such sales of food products purchased by such buyers, including the said Taylor & Sledd, Inc., in their own names and for their own accounts. The respondents sell a substantial quantity of their food products to such buyers either unlabeled or under one or more of the labels or brands of said buyers.

PAR. 5. In connection with the sale of food products to Taylor & Sledd, Inc., as described in paragraph 4 hereof, the respondents, and each of them, for a substantial period of time since June 19, 1936, have entered into a so-called "consignment contract or agreement," originated and promulgated by said Taylor & Sledd, Inc. Under the terms of such so-called "consignment contract or agreement" the food products respondents sell in commerce are purportedly consigned, and advances, usually 80 percent of the purchase price, are made to respondents by the purchaser, Taylor & Sledd, Inc., upon receipt of the food products, or within 10 days after such food products are received from the respondents. The balance due is paid after the food products are resold by Taylor & Sledd, Inc., to its customers. The respondents' use of the so-called "consignment contract or agreement" under these circumstances obviously does not change the real nature of the transaction involved.

PAR. 6. The respondents in the course and conduct of their said business have, since June 19, 1936, sold and distributed a substantial portion of their food products in commerce directly to buyers, including said Taylor & Sledd, Inc. Said buyers are located in States other than the State in which the respondents are located; and as a result of said sales and the respondents' instructions, such food products

have been shipped and transported across State lines by respondents to said buyers, or to said buyers' customers.

PAR. 7. The complaint in this proceeding included as parties respondent, in addition to those named in paragraphs 1 to 3, inclusive, hereof, the individuals C. Sumner Larsen, and R. H. Winters, vice president and treasurer, respectively, of respondent the Larsen Co. It appears that said individual respondents C. Sumner Larsen and R. H. Winters do not exercise a substantial degree of authority and control over distribution and sales policies of respondent the Larsen Co., as alleged in the complaint. The Commission is of the view that the complaint should be dismissed as to said individual respondents C. Sumner Larsen and R. H. Winters.

PAR. 8. The Commission therefore finds that the respondents the Larsen Co., R. E. Lambeau, and Donald F. Larsen, since June 19, 1936, in connection with the interstate sale and distribution of food products have been and are now paying, or have paid or granted, directly or indirectly, commissions, brokerage fees, or other compensation or allowances, or discounts in lieu thereof, to buyers who purchased said food products in commerce in their own names and for their own accounts for resale.

CONCLUSION

The paying and granting by the respondents the Larsen Co., R. E. Lambeau, and Donald F. Larsen, under the circumstances and in the manner aforesaid, of commissions or brokerage fees, or other compensation, or allowances or discounts in lieu thereof, to purchasers of food products on purchases for their own accounts, constitute violations by said respondents of subsection (c) of section 2 of the Clayton Act as amended.

ORDER TO CEASE AND DESIST

This proceding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer by respondents, in which answer respondents admitted, with certain exceptions, all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents the Larsen Co., R. E. Lambeau, and Donald F. Larsen have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act),

as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13):

It is ordered, That the corporate respondent, the Larsen Co., its officers, agents, representatives, and employees, and the individual respondents R. E. Lambeau and Donald F. Larsen, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of food products or other merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to Taylor & Sledd, Inc., or to any other buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale made to any such buyer for its own account.

It is further ordered, That the complaint herein as to C. Sumner Larsen and R. H. Winters be, and the same hereby is, dismissed.

It is further ordered, That the respondents shall, within 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

THE NIX COSMETICS COMPANY, ETC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5291. Complaint, Mar. 9, 1945—Decision, Feb. 8, 1950

Where a corporation engaged in the interstate sale and distribution of a cosmetic preparation which it designated as "Nanette Hormone Cream," to retailers and previously direct to consumers through the mails; in advertisements in newspapers and cards, folders, and circulars which it first published over its own name and address, and later supplied to retailers for publication over their names and paid for through the granting of advertising allowances—

Represented that a woman's breasts which lacked normal growth and size because of insufficient estrogenic substances in her body would be developed and increased in size by the use as directed of its said preparation;

The facts being that the amount of synthetic estrogenic substance made available thereby was insufficient to bring about any substantial physiological changes even in the relatively few cases in which such underdevelopment was due to lack of estrogenic substance; and that in the very large percentage of cases, in which such underdevelopment is caused by other conditions, use of stilbestrol, a synthetic substance and the active ingredient in said preparation, would not be effective to bring about any improvement, regardless of the amount used;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Clinton Robb and *Mr. H. E. Manghum*, of Washington, D. C., for respondent.

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 the Nix Cosmetics Co., a corporation, trading as Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. and Nanette, hereinafter referred to as respondent, has violated the provisions of the 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. The respondent, the Nix Cosmetics Co. is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its office and principal place of business at 162 Madison Avenue, Memphis, Tenn.; and trades and does business under the names Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. and Nanette.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of a cosmetic preparation designated as "Nanette Cosmetic Cream," in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes its said preparation, when sold, to be shipped from its said place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its said preparation, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading statements representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by means of newspapers having a general circulation, cards, folders, and circulars are the following:

Beautify BUST
without massage?

Amazing new Nanette Cream contains recognized scientific estrogens (female sex hormones) which may be needed if your Bust is undernormal, flat, due to lack of supply of sufficient estrogenic substances. Nanette cream vanishes, requires no tiresome MASSAGE. No matter what you have tried now try NANETTE Cream on guarantee of complete Satisfaction or money back. 30-day jar sent in

plain wrap postpaid for $2.00 or C. O. D. plus postage. Write today for new Nanette Cosmetic Cream. P. O. Box 717, Dept. Memphis, Tenn.

PAR. 4. Through the use of the foregoing representations and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly and by implication, that said preparation designated "Nanette Cosmetic Cream" used as directed, will develop and increase the size of a woman's breasts which lack normal growth and size because of insufficient estrogenic substances.

PAR. 5. The foregoing statements and representations disseminated by the respondent in the manner aforesaid, are false, misleading, and deceptive. The active ingredient in said preparation is stilbestrol, a synthetic substance. The directions for use provide that one-half teaspoonful of the preparation shall be applied to the breasts at bedtime and remain over night. While the use of stilbestrol, administered in adequate dosage, may increase the size of women's breasts, when underdevelopment is the result of a lack of estrogenic hormones in the body, not all cases of underdeveloped breasts are caused by such deficiency, in which cases the use of stilbestrol in any amount would not be effective. In cases where underdevelopment is the result of a lack of estrogenic hormones, the use of respondent's preparation will be of no value and will not result in developing or increasing the size of the breasts as the amount of the synthetic estrogenic substance made available to the body is not in sufficient amount to accomplish this result.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 9, 1945, issued and subse-

quently served upon the respondent, the Nix Cosmetics Co., a corporation, its complaint in this proceeding, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondent's answer, testimony, and other evidence were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer thereto, the testimony and other evidence, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, the Nix Cosmetics Co., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 162 Madison Avenue, in the city of Memphis, State of Tennessee. Said respondent trades and does business under the names Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. and Nanette.

PAR. 2. The respondent is now, and for a number of years last past has been, engaged in the sale and distribution of a cosmetic preparation presently designated as "Nanette Hormone Cream." Said preparation is sold to retail dealers for resale to the public. Prior to about May 1944 the preparation was sold under the designation "Nanette Cosmetic Cream," and it was then sold directly to consumers through the mail.

The respondent causes its said cosmetic preparation, when sold, to be shipped from the respondent's place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a regular course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

The respondent's volume of business in the aforesaid preparation is substantial. For the year 1944 its sales of the product amounted to between $15,000 and $20,000.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements; and for the purpose of inducing, and which are likely to induce, the purchase in commerce of said preparation, the respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination, by various means, of certain advertisements. Included among the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by means of newspapers having a general circulation, and through the use of cards, folders, and circulars, are the following:

Beautify BUST
without massage?

Amazing new Nanette Hormone Cream contains recognized scientific estrogens (female sex hormones) which may be needed if your Bust is undernormal, flat, due to lack of supply of sufficient estrogenic substances. Nanette Hormone Cream vanishes, requires no tiresome MASSAGE. No matter what you have tried now try NANETTE Hormone Cream on guarantee of complete satisfaction or money back.

In solicitation of orders for the preparation to be sent by mail "in plain wrap," the advertisements were formerly published by the respondent over its own name and address, but they are now supplied to the various retail dealers for publication over such dealer's names and are paid for by the respondent through the granting of advertising allowances.

PAR. 4. Through the use of the foregoing statements and representations, the respondent has represented, and now represents, that a woman's breasts which lack normal growth and size because of insufficient estrogenic substances in her body will be developed and increased in size by the use, as directed, of said preparation Nanette Hormone Cream (formerly sold as Nanette Cosmetic Cream).

PAR. 5. The active ingredient in the respondent's preparation is stilbestrol, a synthetic substance. The directions for use provide for one-half teaspoonful of the preparation to be applied to the breasts at

bedtime and to remain overnight, thus providing for the application once a day of approximately one-sixth of a milligram of stilbestrol.

The record discloses that while the use of stilbestrol, administered in adequate dosage, may temporarily increase the size of a woman's breasts when they are underdeveloped because of a lack of estrogenic substances, a very large percentage of underdeveloped breasts are caused by conditions other than a lack of estrogenic substances, and that in such cases the use of stilbestrol will not be effective to increase the size of the breasts regardless of the amount used. The record further discloses that in any event the amount of synthetic estrogenic substance made available to the body by the respondent's preparation, when used as directed, is insufficient to bring about any substantial physiological changes, and that even in cases where underdevelopment of breasts is due to a lack of estrogenic substances the use of this preparation, as directed, will not develop or materially increase the size of the breasts.

PAR. 6. The Commission is of the opinion, therefore, and finds, that the respondent's representations concerning its preparation, as set forth in paragraphs 3 and 4 were and are false, deceptive, and misleading, and that the advertisements containing said representations have been and are false advertisements.

PAR. 7. The use by the respondent of said false advertisements has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations made therein are true and to induce such portion of the public, because of such erroneous and mistaken belief, to purchase the respondent's preparation.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respond-

ent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, the Nix Cosmetics Co., a corporation, directly or trading as Nanette Cosmetics Co., Nanette Cosmetic Cream, Nanette Co. or Nanette, or trading under any other trade name or through any corporate device, and said respondent's officers, agents, representatives and employees, in connection with the offering for sale, sale or distribution of the cosmetic preparation known as Nanette Hormone Cream, formerly designated as Nanette Cosmetic Cream, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said preparation, when used as directed, will develop or substantially increase the size of women's breasts.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, any advertisement which contains the representation prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, the Nix Cosmetics Co., shall, within 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 which it has complied with this order.

IN THE MATTER OF

ARLENE WEBER ET AL. TRADING AS WEBER TYPEWRITER MECHANICS SCHOOL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26. 1914

Docket 5453. Complaint, July 11, 1946—Decision, Feb. 8, 1950

Where an individual engaged in the interstate sale and distribution, by mail, of a course of study and instruction in typewriter repairing, which she advertised in magazines of national circulation and through circular letters—

(*a*) Represented falsely through the use of the word "school" in her trade name and in her advertising and lesson material, that she operated a school devoted to the teaching of the trade of typewriter repairing, and employed a faculty of teachers and maintained facilities for the supervisions of such a course, and for review of the work of purchasers thereof and the testing of purchasers' proficiency in the subjects covered;

The facts being that her business consisted solely of the sale of 18 separate pamphlets, which were designated "lessons," described the work of typewriter repairing, and might all be purchased at once upon the payment of $35;

(*b*) Represented, directly or by implication, that she had operated a typewriter and supply business for over 20 years, and that she was a bonded factory distributor; when in fact she had been engaged in the business concerned for less than 3 years, and had no connection with typewriter manufacturers;

(*c*) Represented falsely through the issuance of so-called diplomas to those who had purchased said 18 pamphlets, that the purchaser, as certified thereby, had completed the course and been tested, or had passed examinations therein, and was eligible to become a student dealer and service man; and was thereby assured of such employment; and

(*d*) Represented falsely that the lessons offered by her constituted a simple or practical home-study course which might be mastered by correspondence; that many of her students owned their own business, while many others were engaged as repairmen; that repair shops were over-crowded with work; that one-fourth of all inquiries received by her were from soldiers at army camps; that the health or age of the student constituted no handicap to the successful completion of the course; and that a purchaser of her course of study would acquire therefrom the equivalent of 20 years of experience in typewriter repair work, and would acquire secrets in connection therewith which are not available to the average experienced repairman; and

(*e*) Represented falsely that the vocation of typewriter repairman would assure a large income and permanent employment; that she would positively enable a person to earn from $15 to $50 a day by becoming his own boss; that, among other things, a student was required to make tracings of certain mechanical parts, and to mail them in for comment, and that such tracings were desirable in mastering the course; and that engineers of all of the leading manufacturers of typewriters had participated in the construction of the model machine on which the lessons were based, and that consequently the

mechanical principles of all makes of typewriters might be found in said model;

The facts being that persons desiring to become experts in typewriter repairing were able to obtain manuals from the leading manufacturers which furnished all necessary information, and there was available to soldiers and veterans without cost a government manual which contained similar instructions and information with respect to all the leading makes and was considered by experts superior to said course (which was not simple or practical for those without previous experience); the drawings were neither corrected nor commented on; and individuals without previous experience in typewriter repairing, mechanical aptitude, and business training would not become successful owners of typewriter repair shops and would not secure well-paying positions as typewriter repairmen; and her representations were otherwise false.

(*f*) Represented falsely that purchasers of said course were eligible for, or entitled to receive, wholesale prices on machines, parts and tools, and gasoline or tires for automobiles used in the business; that students who had completed and paid for the course would be furnished with the names of companies from which new and rebuilt typewriters and portable machines might be purchased so as to enable them to establish themselves as dealers; and that arrangements would be made by the school with manufacturers automatically establishing such students as authorized dealers in all makes of rebuilt and many makes of new typewriters;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and thereby induce their purchase of her said course:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. William L. Pencke for the Commission.

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 Arline Weber, Letha Weber, Donald Weber, and Harrison Weber, trading as Weber Typewriter Mechanics School, 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. Arline Weber, Letha Weber, Donald Weber, and Harrison Weber are individuals, trading and doing business under the firm name of Weber Typewriter Mechanics School, with their principal office and place of business located in the town of Osborn,

in the State of Ohio, and whose business address is post-office box 269 in said town and State.

Said respondents are now, and have been for more than 1 year last past, engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction in typewriter repairing, which said course of study is pursued through the medium of the United States mails. Respondents, in the course and conduct of said business during the time aforesaid, caused and do now cause their said course of study and instruction to be transported from their said place of business in the State of Ohio to the purchasers thereof located in the several States of the United States other than the State of Ohio and in the District of Columbia.

PAR. 2. There is now, and has been at all times hereinafter mentioned, a course of trade in said course of instruction so sold and distributed by respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents, by means of advertisements in magazines having a national circulation and circular letters mailed to purchasers and prospective purchasers of their said course of study and instruction, have made and are making, many false, misleading, and deceptive statements and representations regarding said course of study. Typical of said representations are the following:

FIX TYPEWRITERS

A simplified practical home study course. Many of our students have their own business. Many repair for others. Repair shops swamped. Health or age no handicap.

Our factory "code system" and our "unit system" will give you secrets which the average experienced repair man never would find out in his shop * * *.

After we as distributors appoint you as a repair man or dealer you are eligible for wholesale prices on machines and parts.

Our student-servicemen are eligible to wholesale prices on tools, parts, machines and sufficient gas, tires, etc.

Start now to train for a vocation which insures rich rewards and permanent employment during and after the war.

One-fourth of our inquiries are from soldiers at the camps.

We show you positively how to make from $15 to $50 per day by being your own boss.

We have operated a typewriter and supply business for over twenty years.

18 lesson course in typewriter repairing.

Equivalent to 20 years experience.

We are also factory bonded distributors.

Our students trace certain troublesome parts of assembled operations, optional but advisable on each lesson, and send them in for comment. * * *

The engineers from all the leading manufacturers had constructed this machine. Therefore, mechanism similar to all other makes is found in this one single model.

When the student has completed or paid for the course in full he will be given the names of companies from whom he may purchase rebuilt typewriters and new portables * * * and in some cases new typewriters, thus enabling him to establish himself as a dealer if he so desires.

After I have either completed or paid for the course in full it is understood that this school will make arrangements with the manufacturers which will automatically establish me as an Authorized Dealer in all makes of Rebuilt Typewriters, and in many instances New Typewriters, including All New Portables.

PAR. 4. By means of the foregoing statements and representations and many others of similar import, not herein specifically set forth, respondents have represented and implied and do represent and imply that they operate a school devoted to the teaching of the trade of typewriter repairing; that the course consists of a simplified practical home study course and may be studied and mastered by correspondence; that many of their students own their own business while many others are engaged as repairmen; that repair shops are swamped with work and that the health or age of the student constitutes no handicap to the study of the course; that by means of code and unit systems the students will acquire secrets in connection with said trade which are not open to the average experienced repairmen who never could obtain such knowledge; that after students have been appointed by the school as repairmen or dealers they are eligible and entitled to wholesale prices on typewriters of various makes and parts; that the vocation of typewriter repairmen will assure a large income and permanent employment both during and after the war and that respondents will positively enable a person to earn from $15 to $50 a day by becoming his own boss; that one-fourth of all inquiries with respect to said course is received from soldiers stationed at Army camps; that respondents have operated a typewriter and supply business for over 20 years and are factory-bonded distributors; that among other things the student is required to make tracings of certain mechanical parts which are mailed in for comment and that such tracings are desirable in mastering the course; that engineers of all the leading manufacturers of typewriters have participated in the construction of the machine which constitutes the model on which the lessons are based and that consequently the mechanical principles of all other makes of typewriters may be found in said model; that students having completed and paid for respondents' course will be furnished with the names of companies from whom new and rebuilt

typewriters and portable machines may be purchased, thereby enabling them to establish themselves as dealers and that students who act as servicemen are entitled to wholesale prices on tools, parts, machines, and incidental materials such as gas and tires for automobiles used in the business; and that at the completion of said course, arrangements will be made by the school with manufacturers automatically establishing students as authorized dealers in all makes of rebuilt and many new typewriters.

PAR. 5. In truth and in fact all of the foregoing representations and many others of like and similar import and effect are grossly deceptive, false, and misleading. Respondents do not operate a school as said term is generally understood, and the inclusion of the designation "school" in respondents' trade name and throughout the advertising and instruction material is wholly unwarranted and misleading. None of the respondents possesses sufficient practical and technical knowledge in the field of typewriter repairing to qualify or act as teacher or mechanic nor do they attempt to do so. Said respondents maintain no equipment or facilities for the teaching of typewriter repairing nor do they employ any instructors experienced in said work. None of the respondents reviews, corrects, or in any other manner deals with lesson material, and the drawings or tracings sent in by purchasers of said course are not reviewed, criticized, or commented upon by the respondents nor any person qualified and experienced in typewriter construction or repairs. Respondents' said business is in no sense a school for the reason that it consists solely of the sale of 18 separate pamphlets, designated lessons, which describe the work of typewriter repairing. In truth and in fact, all of said 18 lessons may be purchased at one time upon the payment of $35, in which event respondents issue to the purchaser of said complete course a so-called diploma certifying that the purchaser of said course has completed the same and is eligible to become a student dealer and serviceman. Said so-called diploma is wholly without merit in that no evidence is required by respondents showing that the purchaser of said course has studied, comprehended and completed all of the lessons comprising said course or has successfully passed an examination therein, and the representation and implication that such purchaser has completed the course and is qualified as a dealer or a serviceman is therefore false and misleading.

In truth and in fact the work of typewriter repairing cannot be learned by studying a course by correspondence and without supervision by properly qualified teachers and practical work on typewriters. Respondents do not ascertain whether prospective purchas-

ers of said course of study have the necessary mechanical aptitude to become experienced typewriter repairmen; the representations that anyone, regardless of aptitude or qualifications, is assured of earning from $15 to $50 a day, or any other substantial earnings, in said business is grossly misleading and exaggerated. Said course of study is not simplified or practical, but on the contrary is compiled and arranged in such a manner that persons without previous experience in typewriter repairing are unable to understand either the text or mechanical drawings. The tracings of certain illustrations or drawings which students may make and send into respondents are of no practical value in learning the trade of typewriter repairing, for the reason that respondents do not criticize or comment upon said work and thereby assist said students in comprehending said lessons and drawings. Engineers from all leading manufacturers of typewriters did not construct the machine on which respondents' course is based and a student cannot readily comprehend the mechanism of other makes. The so-called factory system or unit system will not furnish students any secrets which are not obtainable or available to any average experienced repairman. On the contrary, persons desiring to become expert in typewriter repair work may obtain manuals from the leading typewriter manufacturers which furnish all necessary information pertaining to the respective typewriters. There is available to soldiers and veterans without cost a manual published by the United States Government containing instructions and information with respect to all of the leading makes of typewriters which manual is considered by experts in typewriter repair work superior to respondents' course of study. While, generally speaking, health or age may not be a handicap in the study of typewriter repairing, it is nevertheless important that a person desiring to do said work successfully have mechanical aptitude, be in reasonably good health and young enough to enable him to handle the very large number of minute parts of a typewriter. Students without previous experience in typewriter repairing, mechanical aptitude, and business training, will not become successful owners of typewriter repair shops or secure well paying positions as repairmen.

In truth and in fact, respondents have no connections with manufacturers of typewriters, are not bonded factory representatives, and are in no position to have purchasers of their said course appointed as agents, distributors, repairmen, or dealers for any makes of typewriters, nor do persons having purchased said course become automatically entitled to wholesale prices, discounts, or priorities for gasoline and oil. Respondents have not been engaged in the typewriter

and supply business for a period of over 20 years, and said course of instruction is not equivalent to 20 years' experience in typewriter repair work. In truth and in fact, respondents have conducted their said business for a period of less than 3 years prior to the date of this complaint.

PAR. 6. The statements and representations made by respondents as aforesaid have had and now have the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial number of said public to purchase respondents' course of study on account thereof.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 11, 1946, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer to said complaint certain testimony was introduced before a trial examiner of the Commission theretofore designated by it and such testimony was duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the testimony, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested) and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Letha Weber, is an individual trading and doing business under the name or trade designation Weber Typewriter Mechanics School, with her business address at P. O. Box 1008, in the city of Canton, State of Ohio.

Arline Weber, Donald Weber, and Harrison Weber, the other parties named in the complaint as respondents herein, are the children of the said Letha Weber, but the record shows that both Donald Weber and Harrison Weber were minors at the time of the hearing and that none of these children ever had any part in the ownership or management of or in the responsibility for the business conducted by the said Letha Weber. None of them ever participated in any of the acts or practices described in the complaint.

PAR. 2. The respondent, Letha Weber, hereinafter sometimes referred to simply as the respondent, is now, and for a number of years last past has been, engaged in the sale and distribution of a course of study and instruction in typewriter repairing, which said course is sold and pursued through the medium of the United States mails. The respondent causes, and has caused, her course of study and instruction, when sold, to be transported from her place of business in the State of Ohio to the purchasers thereof located in the several States of the United States other than the State of Ohio and in the District of Columbia. The respondent maintains, and at all times hereinabove mentioned she has maintained, a regular course of trade in said course of study and instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business and for the purpose of promoting the sale of her course of study and instruction, the respondent, through the use of advertisements published in magazines having a national circulation and circular letters mailed to purchasers and prospective purchasers, has made many statements and representations regarding said course.

In the manner and for the purpose aforesaid, the respondent has represented directly and by implication, that she operates a school devoted to the teaching of the trade of typewriter repairing; that the course sold by her consists of a simplified practical home-study course and may be studied and mastered by correspondence; that many of her students own their own business, while many others are engaged as repairmen; that repair shops are overcrowded with work; that the health or age of the student constitutes no handicap to the successful completion of the course; that by means of code and unit systems the students will acquire secrets in connection with the typewriter repair work which are not available to the average experienced repairman; that after students have been appointed by the school as repairmen or dealers they are eligible for and entitled to receive wholesale

prices on typewriters of various makes and on parts; that the vocation of typewriter repairman will assure a large income and permanent employment; that the respondent will positively enable a person to earn from $15 to $50 a day by becoming his own boss; that one-fourth of all inquiries with respect to the respondent's course are received from soldiers stationed at Army camps; that the respondent has operated a typewriter and supply business for over 20 years and is a factory bonded distributor; that, among other things, a student is required to make tracings of certain mechanical parts which are mailed in for comment and that such tracings are desirable in mastering the course; that engineers of all of the leading manufacturers of typewriters have participated in the construction of the machine constituting the model on which the lessons are based and that consequently the mechanical principles of all makes of typewriters may be found in said model; that students having completed and paid for the respondent's course will be furnished with the names of companies from which new and rebuilt typewriters and portable machines may be purchased, thereby enabling them to establish themselves as dealers; that students who act as service men are entitled to wholesale prices on tools, parts, machines, and incidental materials such as gasoline and tires for automobiles used in the business; and that at the completion of said course arrangements will be made by the school with manufacturers automatically establishing students as authorized dealers in all makes of rebuilt and many makes of new typewriters.

PAR. 4. In truth and in fact the respondent does not operate a school as that term is generally understood, and the designation "School" in her trade name and in her advertising and lesson material is wholly unwarranted and misleading. She does not possess sufficient practical and technical knowledge in the field of typewriter repairing to enable her to qualify or act as a teacher or mechanic, and actually she does not attempt to do so. Said respondent maintains no equipment or facilities for the teaching of typewriter repairing, nor does she employ any instructors experienced in such work. She does not review, correct, or in any manner deal with lesson material, and the drawings or tracings sent in by purchasers of her course are not reviewed, corrected, or commented upon by the respondent or by any person qualified or experienced in typewriter construction or repair.

The respondent's business consists solely of the sale of 18 separate pamphlets, designated lessons, which describe the work of typewriter repairing. All of these lessons may be purchased at one time upon the payment of $35, and when they are so purchased the respondent issues to the purchaser a so-called diploma certifying that the purchaser of

said course has completed the same and is eligible to become a student dealer and serviceman. This so-called diploma is wholly without merit in that it is issued without the presentation of any evidence showing that the purchaser of the course has studied, comprehended, and completed all of the lessons comprising said course or that he has successfully passed an examination therein, and the representation and implication inherent in such diploma that such person has completed the course and is qualified as a dealer or a serviceman are wholly false and misleading.

The work of typewriter repairing and the ability to successfully engage in such vocation cannot be mastered by everyone by studying a course of correspondence and without practical experience or supervision by properly qualified teachers. The respondent does not ascertain whether or not prospective purchasers of her course of study have the necessary mechanical aptitude to become experienced typewriter repairmen, and the representation that anyone, regardless of aptitude or qualifications, is assured of earning from $15 to $50 a day, or any other substantial amount, in the business of typewriter repairing is grossly misleading and exaggerated.

The respondent's course of study is not simplified or practical but, on the contrary, is compiled and arranged in such a manner that persons without previous experience in typewriter repairing are unable to understand either the text of the lessons or the mechanical drawings included therein. The tracings of illustrations or drawings which purchasers of the course may make and send in to the respondent are of no practical value in learning the trade of typewriter repairing for the reason that the respondent does not correct or comment upon said work and thereby assist the purchaser in comprehending the lessons or drawings. Engineers from all leading manufacturers of typewriters did not construct the machine on which the respondent's course is based, and a student cannot, as a result of studying the lessons in such course, readily comprehend the mechanical principles of all makes of typewriters. The so-called factory code system or unit system referred to in the respondent's advertising will not provide purchasers of the respondent's course with any secrets which are not obtainable by or available to any average experienced repairman. On the contrary, persons desiring to become expert in typewriter repair work may obtain manuals from the leading typewriter manufacturers which furnish all necessary information pertaining to the respective makes of typewriters. There is available to soldiers and veterans, without cost, a manual published by the United States Government containing instruction and information with respect to all of

the leading makes of typewriters, which manual is considered by experts in typewriter repair work superior to the respondent's course of study. It may be that, generally speaking, neither health nor age is a handicap in the study of typewriter repairing, but it is, nevertheless, important that a person desiring to undertake such work have mechanical aptitude, be in reasonably good health, and be capable of handling the very large number of minute parts of a typewriter. Individuals without previous experience in typewriter repairing, mechanical aptitude, and business training will not become successful owners of typewriter repair shops and will not secure well-paying positions as typewriter repairmen.

Contrary to the respondent's representations, she has no connections with manufacturers of typewriters. She is not a bonded factory representative and is in no position to have purchasers of her course appointed as agents, distributors, repairmen, or dealers for any makes of typewriters; nor do purchasers of her course automatically become entitled to wholesale prices, discounts or priorities for tools, parts, machines, gasoline, or tires. The respondent has not been engaged in the typewriter and supply business for a period of 20 years, but only for a period of less than 3 years prior to the date of the complaint, and her course of instruction is not equivalent to 20 years experience in typewriter repair work.

For the foregoing reasons and in the particulars stated the respondent's advertising representations referred to in paragraph 3 were and are false, misleading, and deceptive.

PAR. 5. The use by the respondent of the foregoing false, misleading, and deceptive representations has had the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such representations are true and the tendency and capacity to cause such members of the public, because of such erroneous and mistaken belief, to purchase the respondent's course of study and instruction.

CONCLUSION

The acts and practices of the respondent as herein found have all been to the prejudice and injury of the public and have constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' an-

swer thereto, certain testimony introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent, Letha Weber, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Letha Weber, individually and trading under the name or trade designation Weber Typewriter Mechanics School, or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lessons or courses of study in typewriter repairing, do forthwith cease and desist from:

1. Using the word "School," or any other word or term of similar import or meaning, as a part of the name or trade designation under which the respondent conducts her business; or otherwise representing, directly or by implication, that the respondent employs a faculty of teachers or that she maintains facilities for the supervision of a course of study or for review of the work of a purchaser of such course or for the testing of such purchaser's proficiency in any of the subjects covered;

2. Representing, directly or by implication, that the respondent has operated a typewriter or supply business for over twenty years, or for any period of time greater than that during which she has actually been in business, or that the respondent is a factory bonded distributor;

3. Representing, through the issuance of so-called diplomas, or by any other means, that a purchaser of the respondent's course of study has completed the lessons comprising such course, or that he has been tested or has passed examinations therein, or that such purchaser, even if he has completed the lessons comprising such course, is thereby qualified to become or is assured of employment by a typewriter dealer or serviceman;

4. Representing, directly or by implication, that the lessons offered for sale by the respondent constitute a simple or practical home-study course which may be mastered by correspondence; that any person other than one with previous mechanical experience or one who has demonstrated an aptitude for mechanics is qualified to occupy a position as typewriter repairman; or that a purchaser of the respondent's

course of study will acquire therefrom the equivalent of 20 years, or any other number of years, experience in typewriter repair work or obtain any secrets not available to the average experienced typewriter repairman;

5. Representing, directly or by implication, that tracings or drawings sent to the respondent by purchasers of her course of study will be reviewed, criticized, or commented upon by the respondent or by any other person, or that the machine used as a model upon which the lessons comprising the respondent's course of study are based was constructed by engineers from all of the leading typewriter manufacturers, or that such model includes the mechanical principles of all makes of typewriters;

6. Representing, directly or by implication, that purchasers of the respondent's course of study are eligible for or entitled to receive wholesale prices on machines, parts, tools, gasoline, or tires;

7. Representing, directly or by implication, that the purchasers of the respondent's course of study will be furnished the names of companies from which they may purchase as dealers new or rebuilt typewriters, or that the respondent will make arrangements with manufacturers which will establish such purchasers as authorized dealers in typewriters;

8. Representing as possible earnings or profits of individuals completing the respondent's course of study any specified sum of money which is not a true representation of the average net earnings consistently made by individuals who have completed such course over substantial periods of time under normal conditions and circumstances.

It is further ordered, For the reasons set forth in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents Arline Weber, Donald Weber, and Harrison Weber.

It is further ordered, That the respondent, Letha Weber, shall, within 60 days after service upon her of this order, file with the Commission report in writing, setting forth in detail the manner and form in which she has complied with this order.

Syllabus

IN THE MATTER OF

J. RICHARD PHILLIPS, JR. & SONS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATIONS OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5576. Complaint, July 20, 1948—Decision, Feb. 8, 1950

In a proceeding in which it was alleged that respondent sellers paid commissions or allowances upon or in connection with sales made to a certain buyer for its own account, and in which it appeared that said buyers made use of so-called consignment contracts or agreements under which it made advances—usually from 80 to 90 percent of the purchase price—ordinarily paying the balance after it resold the products, but in some instances paying the total purchase price before such resale; it appearing further, however, that said buyer, in connection with such purchases, took title to the products concerned, assumed all of the risks incident to ownership and sold them at its own prices and terms and took a profit or loss: Such use of said so-called consignment contracts or agreements obviously did not change the real nature of the transaction involved.

Where six concerns, engaged in certain Eastern States in canning food products including tomatoes, tomato juice, peas, lima beans, asparagus, and corn, and in the interstate sale and distribution thereof under their own brands and labels, and those of their customers, through brokers, and directly to a certain buyer which conducted its business as a distributor of food products in part as a broker, and in part as a direct buyer, in the latter capacity taking title to food products it purchased and assuming all the risks incident to ownership—

(*a*) Granted and allowed, directly or indirectly to said buyer, in connection with purchases made on its own account under so-called consignment contracts, and on transactions in which it did not function as a broker or sales agent commissions, brokerage fees or other allowances in lieu thereof; and

Where said buyer, one of the largest distributors in the South, of canned fruits and vegetables, herring, and herring roe, which it sold to customers in Virginia and the Carolinas, and owner of a number of registered trademarks which it utilized as brands for its food products—

(*b*) Received and accepted from the aforesaid and from numerous other sellers, on purchase made for its own account as above described, commissions, brokers' fees, or other allowances in lieu thereof:

Held, That the granting and allowance by such sellers, and the receiving and acceptance by said buyer of commissions, brokerage fees or allowances of discounts in lieu thereof, under the circumstances above set forth, constituted violations of section 2 (c) of the Clayton Act as amended.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondents.

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Gordon & Gordon, of Richmond, Va., also represented Taylor & Sledd, Inc.

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, since June 19, 1936, have been and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 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 J. Richard Phillips, Jr. & Sons, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Berlin, Md., and with a branch office and plant located at Barkers Landing, Magnolia, Del. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling and distributing such products, principally tomatoes, tomato juice, peas, and lima beans.

PAR. 2. Respondent H. P. Cannon & Son, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at Bridgeville, Del. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling and distributing such products, principally peas, asparagus, stringless beans, tomatoes, tomato juice, pumpkins, squash, lima beans, and sweet peppers.

PAR. 3. Respondent Charles T. Wrightson & Sons, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Easton, Md. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling, and distributing such products, principally peas, tomatoes, and corn.

PAR. 4. Respondent the Torsch Canning Co. is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Milford, Del. The respondent herein is engaged, and for many years since June 19, 1936, has been engaged, in the business of canning food products, offering for sale, selling and distributing such products, principally mixed

vegetables, peas and carrots, lima beans, corn, succotash, peas, stringless beans, and tomatoes.

PAR. 5. Respondents Walter S. Cameron, Sr., and Walter M. Cameron, Jr., are partners trading as Cameron Bros. Canning Co., with their principal office and place of business located at Rising Sun, Md., and having a branch office and plant located at Nottingham, Pa. The respondents herein are engaged, and for many years since June 19, 1936, have been engaged, in the business of canning food products, offering for sale, selling, and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 6. Respondents Charles B. Osborn and S. Mitchell Osborn are partners trading as C. B. Osborn Sons, with their principal office and place of business located at Aberdeen, Md. The respondents herein are engaged, and for many years since June 19, 1936, have been engaged, in the business of canning food products, offering for sale, selling, and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 7. Respondents J. Richard Phillips, Jr. & Sons, Inc., H. P. Cannon & Sons, Inc., Charles T. Wrightson & Son, Inc., the Torsch Canning Co., Walter S. Cameron, Sr., and Walter M. Cameron, Jr., partners trading as Cameron Bros. Canning Co., and Charles B. Osborn and S. Mitchell Osborn, partners, trading as C. B. Osborn Sons, each and all of whom are hereinafter designated as respondent sellers, have since June 19, 1936, distributed and sold their food products through brokers to buyers, and directly to a buyer, namely, respondent Taylor & Sledd, Inc., for resale. The respondent sellers sell food products under their own labels or brands and also under buyers' labels or brands, including the brands of respondent buyer.

PAR. 8. Respondent Taylor & Sledd, Inc., is a corporation organized under the laws of the State of Virginia in 1918 with its office, warehouse and principal place of business located at 2201 East Cary Street, Richmond, Va., and has engaged and is now engaged in the purchase, sale, and distribution of food products, principally canned fruits and vegetables, herring and herring roe (all of which are hereinafter designated as food products). The respondent Taylor & Sledd, Inc. (hereinafter referred to as respondent buyer), sells and distributes such food products to its customers located principally in the States of Virginia and North and South Carolina, although substantial sales are made to other of its customers located chiefly in adjoining States. The respondent buyer purchases and sells for its own account several million dollars' worth of food products, which are packed

principally under its own labels, each year. Such food products are purchased in commerce for resale from approximately 60 sellers, including each of the respondent sellers.

PAR. 9. The respondent sellers and each of them, for a substantial period of time since June 19, 1936, shipped, transported, and sold food products in commerce to repondent buyer and to respondent buyer's customers. The respondent buyer, for a substantial period of time since June 19, 1936, purchased, received, and accepted food products in commerce from many sellers, including each of the respondent sellers herein.

In the course and conduct of their respective businesses since June 19, 1936, as aforesaid, respondent sellers, and each of them, and the respondent buyer transport or cause to be transported the said food products hereinabove described when sold from their respective locations to the purchasers thereof located in the several States of the United States other than the States where such shipments originated and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said food products between and among the various States wherein each of the respondents' sellers and the respondent buyer, and each and all of the respective purchasers of such food products are located. Respondent sellers, and each of them, and the respondent buyer maintained, and at all times mentioned herein have maintained, a continuous course of trade and commerce in said food products among and between the various States of the United States.

PAR. 10. The respondent buyer, for a substantial period of time since June 19, 1936, and since the enactment of the Robinson-Patman Act, for the purpose of masking its operations in order to impart a color of legality to the brokerage payments it receives from sellers on its purchases of food products, originated and promulgated so-called "consignment contract or agreement." Under the provisions of the "consignment contract or agreement" the food products respondent buyer purchases in commerce are alleged to be consigned, and advances, usually from 80 to 90 percent of the purchase price, are made by respondent buyer to the sellers thereof, including respondent sellers, within 10 days after such food products are received by the respondent buyer from the respective sellers. The balance due is paid after the food products are resold by respondent buyer to its customers. On some occasions the total amount due for the food products purchased is paid to the respective sellers before the food products, or all of such food products, have been sold by respondent buyer.

PAR. 11. The respondent buyer purchases and sells all, or substantially all, of its food products bearing a printed label upon which one of its numerous trade-marks, consisting of a distinctive word, emblem, or symbol, or a combination of any of these, is shown. Such labels are utilized as brands and are attached to such food products at respondent buyer's direction by the respective sellers for the purpose of consumers identifying such commodities as the food products of the owner of the brands so that repeat sales may be centered upon such brands.

A brand, trade-mark, or trade name may be defined as a symbol of business good will. Good will, as used herein, may be defined as an attitude in consumers which causes them to continue to patronize a certain place or person, or to purchase a definite food product. Upon the brand used depends to whom the good will created by the food product accrues. Thus, when respondent buyer sells goods which bear its own brand, the good will accrues to it, whereas when it sells goods bearing the brand of another the good will accrues not to the respondent buyer but to the owner of the particular brand. That such is the purpose and effect of the use of brands is well known in the industry and generally.

The respondent buyer's food products are sold and distributed under two distinct brand classifications, namely, and principally: (1) private or distributor's brands, and (2) seller's brands.

A private brand may be defined as a brand owned and controlled by other than the original seller and, as referred to herein, designates brands utilized by respondent buyer as distinguished from the original sellers and which brands identify the food products with the respondent buyer and permits the respondent buyer to promote the sale of those food products independently of manufacturers or sellers; and respondent buyer, as distributor, rather than the manufacturers as original sellers, assumes the responsibility all the way through the channels of distribution to the consumer, and whatever good will is established accrues to the respondent buyer and not to the original sellers. Respondent buyer determines the sales and price policies with reference to such food products.

A seller's brand may be defined as a brand owned and controlled by the original seller, and, as referred to herein, designates the brands owned and utilized by the respondent sellers in the promotion and sale of their products, which brands identify the particular products for which such original sellers assume the responsibility all the way through the channels of distribution to the consumers, and whatever good will is established thereby accrues to the respective sellers.

Respondent buyer is the largest or one of the largest distributors of food products in the South. The food products it distributes and sells are principally canned fruits and vegetables, herring and herring roe, purchasing, since June 19, 1936, such commodities from competing canners and packers, and other sellers, including each of the respondent sellers. Such products as are purchased by respondent buyer are purchased principally but not entirely under the several private brands of respondent buyer. Representative of such registered trade-marks or private brands are: Pocahontas, Tidewater, Enfield Club, Wigwam, Powhatan, Wilton, Uncle Ned, Durham Maid.

PAR. 12. Respondent buyer, since June 19, 1936, has been and is now engaged in the business of distributing food products by two separate and distinct methods, namely: (1) as brokers, which is not challenged by the complaint herein, and (2) as buyers, which is challenged by the complaint herein.

FIRST: Respondent buyer's business as "brokers" of food products may be described as follows:

Respondent, in such capacity, acts as sales agent which negotiates the sale of food products for and on account of seller-principals, and respondent buyer's only compensation is a commission or brokerage fee paid by such seller-principals.

The respondent buyer solicits and obtains orders for such food products at the respective seller-principals' prices and on such seller-principals' terms of sale. The respondent buyer, as a food broker, transmits purchase orders to its several seller-principals who thereafter invoice and ship such food products directly to the customer, and collect the purchase price from such customers.

The respondent buyer, as brokers of food products, has no financial interest in the food product it sells. Its only financial interest is the commission or brokerage fee it receives and accepts from the seller-principal for making the sale. Such commissions or brokerage fees are customarily based on a percentage of the invoice sales price of the food products sold.

The respondent buyer in this capacity is a broker and not a trader for profit. The respondent does not take title to, or have any financial interest in, the food products sold and neither makes a profit nor suffers any loss on the transaction. This phase of respondent buyer's business is not challenged by the complaint.

SECOND: Respondent buyer's business as buyer of food products, which is challenged by the complaint, may be described as follows: The respondent buyer transmits its own purchase orders for food products directly to the various sellers from whom it buys. Such

sellers invoice and ship such food products directly to respondent, and receives and accepts, directly or indirectly, from the respective sellers from whom it buys such food products for its own account, commissions or brokerage fees.

The respondent buyer, in connection with such purchases, is a direct buyer and as such is a trader for profit, purchasing and reselling such food products principally under its own private brands and for its own account and at its own prices and on its own terms, taking title to such food products and assuming all the risk incident to ownership.

The respondent buyer, before purchasing, shops the market, purchasing where it is able to secure the most favorable prices and terms, including the payment of commissions or brokerage fees. If such food products, shipped to the respondent by such sellers, are lost or damaged in transit, the respondent files claim with the carrier and collects damages from the carrier in its own name and for its own account.

The respondent buyer enters into formal contracts with its sellers or with some of its sellers whereby respondent buyer contracts to buy, and the sellers contract to sell, definite quantities of certain food products at a stated price. Many of such contracts require the seller to deliver to the respondent such food products over an extended period of time at a stated price.

The respondent, upon receipt of such food products from its various sellers, warehouses such products in its own warehouses and insures the food products at its own expense and in its own name and for its own account against contingent loss or damage. The respondent buyer is also insured against accidents arising out of the handling or use of such canned foods.

When respondent buyer sells such food products, it invoices the products to its customers in its own name and for its own account and at prices and on terms it determines. The respondent assumes full and complete credit risk on such transactions, reaping a profit or sustaining a loss thereon, as the case may be.

PAR. 13. Respondent sellers, and each of them, in connection with the sale of food products in commerce to respondent buyer since June 19, 1936, as hereinabove alleged and described, have directly or indirectly granted and paid commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof to respondent buyer, and respondent buyer, in connection with the purchase of food products in commerce from each and all of the respondent sellers and other sellers since June 19, 1936, as hereinabove alleged and described,

has directly or indirectly received and accepted commissions, brokerage fees or other compensations or allowances or discounts in lieu thereof from each of the respondent sellers and other sellers.

PAR. 14. The foregoing acts and practices of respondent sellers, and each of them, in granting and allowing commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof to the respondent buyer in connection with their sales of food products to the said respondent buyer, and the foregoing acts of respondent buyer in receiving and accepting commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof from each of the respondent sellers and other sellers in connection with its purchase of food products are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission on July 20, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act, as amended. On September 24, 1948, the respondents filed their separate answers in which they denied many of the allegations of said complaint, but on February 21, 1949, they filed motions for leave to withdraw said original answers and to file in lieu thereof substitute answers in which they admit, with certain qualifications, all of the material allegations of fact contained in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission, by order entered herein on August 3, 1949, granted said motions. The filing of the substitute answers having been made with the understanding that if this proceeding were not disposed of by the issuance of a form of order to cease and desist attached thereto and recommended by the respondents, the respondents reserved to themselves the right to file written briefs and present oral argument as to the form of order which should be issued; and said proposed form of order having been altered by the Commission to the extent and for the reasons shown in the tentative order entered August 3, 1949, the respondents were afforded opportunity to show cause why said tentative order should not be entered herein as an order to cease and desist. The respondents not having appeared in response to the leave to show

cause, this proceeding regularly came on for final hearing before the Commission upon the complaint and the substitute answers; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent J. Richard Phillips, Jr. & Sons, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Berlin, Md., and with a branch office and plant located at Barkers Landing, Magnolia, Del. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling, and distributing such products, principally tomatoes, tomato juice, peas, and lima beans.

PAR. 2. Respondent H. P. Cannon & Son, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at Bridgeville, Del. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally peas, asparagus, stringless beans, tomatoes, tomato juice, pumpkins, squash, lima beans, and sweet peppers.

PAR. 3. Respondent Charles T. Wrightson & Son, Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Easton, Md. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally peas, tomatoes, and corn.

PAR. 4. Respondent the Torsch Canning Co. is a corporation organized and existing under the laws of the State of Maryland, with its office and place of business located at Milford, Del. This respondent, for many years since June 19, 1936, has been engaged, and is now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally mixed vegetables, peas and carrots, lima beans, corn, succotash, peas, stringless beans, and tomatoes.

PAR. 5. Respondents Walter M. Cameron, Sr. (erroneously named in the complaint as Walter S. Cameron, Sr.), and Walter M. Cameron, Jr., are partners trading as Cameron Bros. Canning Co., with their

principal office and place of business located at Rising Sun, Md., and a branch office and plant located at Nottingham, Pa. These respondents, for many years since June 19, 1936, have been engaged, and are now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 6. Respondents Charles B. Osborn and S. Mitchell Osborn are partners trading as C. B. Osborn Sons, with their principal office and place of business located at Aberdeen, Md. These respondents, for many years since June 19, 1936, have been engaged, and are now engaged, in the business of canning food products and in offering for sale, selling and distributing such products, principally shoe-peg corn and golden bantam corn.

PAR. 7. The Respondents named in paragraphs 1 to 6, inclusive, hereof (each and all of whom are hereinafter referred to as "respondent sellers"), since June 19, 1936, have distributed and sold their food products through brokers to buyers and directly to a buyer, namely, respondent Taylor & Sledd, Inc., for resale. Said respondent sellers sell their food products under their own labels or brands and also under buyers' labels or brands, including the brands of the respondent Taylor & Sledd, Inc.

PAR. 8. Respondent Taylor & Sledd, Inc., is a corporation organized in 1918 under the laws of the State of Virginia, with its office, warehouse, and principal place of business located at 2201 East Cary Street, Richmond, Va. This respondent is engaged in the purchase and in the sale and distribution of food products, principally canned fruits and vegetables, herring and herring roe. Respondent Taylor & Sledd, Inc. (hereinafter referred to as "respondent buyer"), sells and distributes such food products to its customers located principally in the States of Virginia and North and South Carolina, although substantial sales are also made to other of its customers located chiefly in adjoining States. The respondent buyer is the largest, or one of the largest, distributors of food products in the South. It purchases and sells for its own account annually several million dollars worth of food products, which products are purchased in commerce for resale from approximately 60 sellers, including each of the respondent sellers.

PAR. 9. The respondent sellers, and each of them, for a substantial period of time since June 19, 1936, have shipped, transported, and sold food products in commerce to the respondent buyer and to respondent buyer's customers. The respondent buyer, for a substantial period of time since June 19, 1936, has purchased, received, and accepted food

products in commerce from many sellers, including each of the respondent sellers named herein.

In the course and conduct of their respective businesses, since June 19, 1936, the respondent sellers, and each of them, and the respondent buyer, have transported or caused to be transported the food products hereinabove described, when sold, from their respective locations to the purchasers thereof located in the several States of the United States other than the States in which such shipments have originated, and at all times herein mentioned there has been a continuous current of trade and commerce in said food products among and between the various States wherein each of the respondent sellers and the respondent buyer, and each and all of the respective purchasers of such food products, are located. Respondent sellers, and each of them, and respondent buyer maintain, and at all times mentioned herein have maintained, a continuous course of trade and commerce in said food products among and between the various States of the United States.

PAR. 10. Respondent buyer, since June 19, 1936, has conducted, and now conducts, its business of distributing food products by two separate and distinct methods, namely, (1) as a broker, which method was not challenged by the complaint in this proceeding, and (2) as a buyer, which method was challenged by the complaint herein.

As a broker, the respondent buyer acts as an intermediary or sales agent, and in this capacity negotiates the sale of food products for and on account of various seller principals, receiving as its only compensation therefor commissions or brokerage fees paid by each such seller principal. In representing its seller principals, the respondent buyer contacts prospective purchasers, solicits and obtains orders for food products at prices and on terms of sale determined by the respective seller principals, and transmits purchase orders for such products to its several seller principals, who thereafter invoice and ship the merchandise ordered directly to the customers and collect from such customers the purchase price thereof. In this type of transaction the respondent buyer, as a broker, has no financial interest whatever in the food products it sells, its only financial interest being in the commissions or brokerage fees it expects to receive from the seller principals for making the sales, and the respondent buyer in such a case is in no sense a trader for profit. It does not take title to any of the food products sold, assumes none of the credit risk that may be involved, and it neither makes a profit nor suffers loss on any such transaction. This phase of the respondent buyer's business operations is not involved in this proceeding.

In addition to acting as a broker or sales agent, as aforesaid, the respondent buyer, in the regular course and conduct of its business, transmits to the various sellers with which it deals, including the respondent sellers, its own purchase orders for food products. Upon the receipt of such orders, the various sellers invoice and ship the food products ordered directly to the respondent buyer who, in connection with such purchases, is a direct purchaser, taking title to such food products and assuming all of the risks incident to ownership thereof. The respondent buyer, before purchasing, shops the market and purchases where it is able to obtain the most favorable prices and terms. If the food products so purchased by the respondent buyer are lost or damaged while in transit, the respondent buyer files claims with the carriers for such loss or damage and collects damages for its own benefit. Upon receiving the food products from the various sellers, the respondent buyer warehouses such products in its own warehouses, insures the products in its own name and at its own expense and for its own account against contingent loss or damage and against accidents arising out of handling, and when it sell such products it does so at prices and on terms of sale which it alone determines and thereafter invoices the products to its customers in its own name and for its own account, assuming full and complete credit risks in connection therewith and reaping a profit or sustaining a loss on the transaction, as the case may be. Respondent buyer frequently enters into formal contracts with sellers of food products whereby it contracts to buy, and the sellers contract to sell, definite quantities of certain food products at stated prices. Many of such contracts require the sellers to deliver to the respondent buyer such food products over an extended period of time. In such cases, of course, the respondent buyer's profit or loss on each of the transactions depends in part upon whether the market advances or declines after the contracts are executed.

PAR. 11. In connection with its purchases of food products for its own account as described in paragraph 10 hereof, the respondent buyer, for a substantial period of time since June 19, 1936, has also entered into so-called consignment contracts or agreements with various sellers, including the respondent sellers. Under the terms of such consignment contracts or agreements the food products purchased by the respondent buyer are purportedly consigned to it, and advances, usually from 80 to 90 percent of the purchase price of the products, are made by respondent buyer to the sellers thereof within 10 days after such food products are received by the respondent buyer from the respective sellers. The balance due on such products is ordinarily paid

after the products are resold by the respondent buyer to its customers. On some occasions, however, the total purchase price of the food products purchased under this arrangement is paid by the respondent buyer even before such products, or all of them, have been resold. The respondent buyer's use of the so-called consignment contract or agreement under these circumstances obviously does not change the real nature of the transaction involved.

PAR. 12. The respondent buyer is the owner of a number of registered trade-marks, consisting of distinctive words, emblems, or symbols, or combinations thereof, which it utilizes as brands for its food products, and the food products purchased by it from competing sellers in the manner described in the two preceding paragraphs usually, but not always, bear labels showing one or another of these private brands, which are affixed to the products by the sellers at the direction of the respondent buyer. Representative of such registered trade-marks or private brands under which such products are purchased and later resold by the respondent buyer are the following: Pocahontas, Tidewater, Enfield Club, Wigwam, Powhatan, Wilton, Uncle Ned, Durham Maid.

PAR. 13. The Commission therefore finds that since June 19, 1936, the respondent sellers have sold directly to the respondent buyer for its own account, in interstate transactions in which the respondent buyer did not function as a broker or sales agent, substantial quantities of food products. The Commission further finds that since June 19, 1936, the respondent buyer has purchased from many sellers, including each of the respondent sellers, for its own account, in interstate transactions, substantial quantities of food products. In connection with such sales to the respondent buyer, the respondent sellers have, directly or indirectly, granted and allowed to the respondent buyer commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof; and in connection with such purchases from each and all of the respondent sellers, and from other sellers, as herein found, the respondent buyer has, directly or indirectly, received and accepted from such sellers commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof.

CONCLUSION

The granting and allowance by the respondent sellers and the receipt and acceptance by the respondent buyer of commissions, brokerage fees, or allowances or discounts in lieu thereof, under the circumstances and in the manner aforesaid, constitute violations by

each and all of said respondents of subsection (c) of section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers of the respondents, in which answers said respondents admit, with certain qualifications, all of the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to said facts; and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. C. C., sec. 13).

It is ordered, That the corporate respondents, J. Richard Phillips, Jr. & Sons, Inc.; H. P. Cannon & Son, Inc.; Charles T. Wrightson & Son, Inc.; and the Torsch Canning Co.; and their officers, and Walter M. Cameron, Sr., and Walter M. Cameron, Jr., individually, and as partners trading as Cameron Bros. Canning Co.; and Charles B. Osborn and S. Mitchell Osborn, individually, and as partners trading as C. B. Osborn Sons; and said respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to Taylor & Sledd, Inc., or to any other buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale made to any such buyer for its own account.

It is further ordered, That the respondent, Taylor & Sledd, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase made for such respondent's own account.

It is further ordered, That the respondents shall, within 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

AMERICAN DENTAL TRADE ASSOCIATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5636. Complaint, Feb. 1, 1949—Decision, Feb. 8, 1950

Where a large number of manufacturers and distributors of dental goods—including instruments, appliances, alloys, cement, artificial teeth, drugs and compounds, chairs, and office furniture, and all other articles employed in the practice of the dental profession—which sold and distributed over 75 percent of the volume of such goods made, sold, and distributed in the United States and, by reason thereof, were able to dominate and control said industries therein; and which, prior to the unlawful conspiracy below set out, were in competition with one another, and were still in competition with others engaged therein; together with their association, its officers, and its component dealers' clubs or associations, and manufacturers' groups—

Engaged in and carried on an unlawful understanding and conspiracy to restrain competition in price and otherwise, between and among themselves, and to monopolize said manufacture, purchase, sale, and distribution; and in furtherance of said understanding, etc.—

(1) Classified dental goods, and agreed upon exact retail prices of such goods to be sold to both dealers and ultimate consumers; and upon uniform rates of discount for dealers purchasing from manufacturers, and uniform terms of credit for dentists and other consumers; and agreed upon and fixed uniform allowances for used dental equipment taken in exchange for new equipment, and upon uniform prices and terms of sale for such used equipment;

(2) Agreed to and did disseminate among themselves and by and through their said association at frequent intervals, current and future quotations of prices, terms, and conditions of sale offered to the trade by member manufacturers and member dealers; and held meetings at which prices, terms and conditions of sale and trade practices and policies designed to eliminate competition in price and otherwise among themselves, were discussed and acted upon;

(3) Agreed upon such a division of territory among the member dealers as would result in a minimum of competition among them, and established a sytem of policing the industry whereby deviations from pricing and selling policies and practices were reported to appropriate officers and committees of their said association and its sectional dealers' clubs, who thereafter brought pressure to bear upon the alleged price violator; with the result that the agreed-upon pricing and selling policies and practices were adhered to;

(4) Agreed to and did cause all dealers to sell the products of the member manufacturers at prices fixed and prescribed by the latter; and prevented independent dealers from obtaining merchandise for resale by such practices as buying the entire output of manufacturers who sold to such

independents, buying upon the understanding that the manufacturers would sell to member dealers only, and charging independent dealers consumer prices;

(5) Agreed to and did cause member dealers to buy only from member manufacturers, and such manufacturers to sell only to member dealers; and agreed to and did cause such manufacturers and dealers not to sell member manufacturers' products to jobbers or to those with whom trade relations had not been established by such manufacturers, and thereby prevented independent dealers from obtaining the products of the member manufacturers;

(6) Agreed to and did systematically disparage independent manufacturers and dealers and their dental products, through characterizing them as "gripsackers," "carpet baggers," illegitimate," "price-cutters," "unauthorized," "unreliable," and other derogatory names as contrasted to the members who were characterized as "legitimate," "authorized," "recognized," or "reliable"; and through characterizing the products of the former as "illegitimate," "substanard goods," "off-brand merchandise," "cheap quality merchandise," "monkey brands," etc., in contrast with the "authorized "legitimate," "quality merchandise," or "standard products" of the latter;

Capacity, tendency, and effect of which agreement, etc, and of the acts and practices done pursuant thereto were—

1. To substantially restrain competition among and between said member manufacturers and member dealers in the manufacture and sale and distribution of said goods in commerce;

2. To restrict and prevent competition in price and otherwise between and among them in said manufacture, sale, and distribution;

3. To enable them to control the market and enhance the prices paid by purchasers of said products; and,

4. To have a dangerous tendency to create a monopoly in them in the manufacture, sale, and distribution of said products in interstate commerce:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice and injury of the public and of competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Frank Hier*, trial examiner.

Mr. Floyd O. Collins, *Mr. Earl W. Kintner*, and *Mr. Peter J. Dias* for the Commission.

Donovan, *Leisure*, *Newton*, *Lumbard & Irvine*, of New York City, for American Dental Trade Association, its officers, members of the executive board, various member dealers and member manufacturers, and along with—

Lilly, *Luyendyk & Snyder*, of Grand Rapids, Mich., for Bignall Dental Supply;

Bullitt, *Dawson & Tarrant*, of Louisville, Ky., for T. M. Crutcher Dental Depot, Inc. (Kentucky);

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Davis, Baltzell, Hartsock & Dongus, of Indianapolis, Ind., for T. M. Crutcher Dental Depot, Inc. (Indiana);

Gifford, Graham, MacDonald & Illig, of Erie, Pa., for Dental Service Co., Inc., and American Sterilizer Co.;

Mr. Ira L. Quiat, of Denver, Colo., for the Dental Specialty Co. and Densco, Inc.;

Culver, Phillip, Kaufman & Smith, of St. Joseph, Mo., for Goetze-Niemer Physician & Dental Supply Co.;

Mr. Robert Adair Black and *Mr. George C. Kuhn*, of Cincinnati, Ohio, for the Harmeyer & Brand Co.;

Mr. Samuel Barker, of Washington, D. C., for Harris Dental Co., Inc.;

Snowden, Davis, Brown, McCloy & Donelson, of Memphis, Tenn., for E. L. Mercere, Inc.;

Mr. Wilfred B. Feiga, of Worcester, Mass., for E. R. Mitchell Dental Depot;

Morrison, Nugent, Berger, Hecker & Buck, of Kansas City, Mo., for Pattison-McGrath Co.;

Mr. John Grossman, of St. Louis, Mo., for Thau-Nolde, Inc.;

Mr. William C. Eliot, of Phoenix, Ariz., for Tri-State Dental Supply Co.;

Mr. Robert R. Rankin, of Portland, Oreg., for John Welch Dental Depot, Inc.;

Wittig & Wittig, of Milwaukee, Wis., for Wright's, Inc.;

Nash & Nash, of Manitowoc, Wis., for the American Cabinet Co.;

Mr. Louis A. Schiffman, of Carlstadt, N. J., for Claudius Ash Sons & Co., U. S., Inc.;

Castle, Fitch, Swan & Jefferson, of Rochester, N. Y., for Wilmot Castle Co.;

Rogers, Hoge & Hillis, of New York City, for Cook-Waite Laboratories, Inc.;

McManus & Ernst, of New York City, for J. F. Jelenko & Co., Inc.;

Clark, Klein, Brucker & Waples, of Detroit, Mich., for Kerr Manufacturing Co.;

Mr. Harley A. Watkins, of Toledo, Ohio, for McKesson Appliance Co.;

Mr. Robert J. Callaghan, of Philadelphia, Pa., for the J. Bird Moyer Co., Inc.;

McWilliams, Wagner & Troutman, of Philadelphia, Pa., for Mynol Chemical Co., Inc.;

Drinker, Biddle & Reath, of Philadelphia, Pa., for Geo. P. Pilling & Son Co.;

Mr. Sidney F. Moody, of Chicago, Ill., for Rinn X-Ray Products, Inc.;

Leonard, Street & Deinard, of Minneapolis, Minn., for Spyco Smelting & Refining Co.;

Mr Robert L. London, of New York City, for the Weber Dental Manufacturing Co.; and

Brown, Fox & Blumberg, of Chicago, Ill., for Goldsmith Bros. Co.

Mr. Karl Huber, of Newark N. J., for the American Platinum Works.

Thayer & Gilbert, of New York City, for General Electric X-Ray Corp.

Mr. Kenneth Perry, of New Brunswick, N. J., for Johnson & Johnson.

Shearman & Sterling & Wright, of New York City and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., for the Ohio Chemical & Manufacturing Co.

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 each and all of the parties named in the caption hereof and more particularly described herein in paragraphs 2, 3, and 4 and hereinafter referred to as respondents, have violated the provisions of the 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. The words and terms set out in this paragraph shall have the following meaning wherever used in this complaint:

(*a*) "Dental Goods" means instruments, appliances, alloys, cement, artificial teeth, drugs and compounds, chairs and office furniture, and all other articles or products employed in the practice of the dental profession.

(*b*) "Member manufacturer" means an individual, partnership, or corporation engaged in the manufacture, sale, and distribution of dental goods and holding membership in the respondent, American Dental Trade Association.

(*c*) "Member dealer" means an individual, partnership, or corporation engaged in the sale and distribution of dental goods and holding membership in the respondent, American Dental Trade Association.

(*d*) "Independent manufacturer" means an individual, partnership, or corporation engaged in the manufacture, sale, and distribution of dental goods and not holding membership in the respondent, American Dental Trade Association.

(*e*) "Independent dealer" means an individual, partnership, or corporation engaged in the sale and distribution of dental goods and not holding membership in the respondent, American Dental Trade Association.

PAR. 2. Respondent, American Dental Trade Association, hereinafter referred to as National Association, is a voluntary unincorporated association, organized by and composed of individuals, partnerships, and corporations engaged in the business of manufacturing, purchasing, selling, and distributing dental goods in commerce among and between the various States of the United States, the District of Columbia, United States Territories, and various foreign countries, with its principal office and place of business at 1010 Vermont Avenue NW., Washington, D. C.

Respondent, National Association was organized for the purpose of:

(*a*) Fostering and promoting the best interests of the trade or industry.

(*b*) Collecting and disseminating facts concerning the trade or industry.

(*c*) Fostering and maintaining common pricing policies for dental goods among its membership.

(*d*) Confining and monopolizing the trade in dental goods within its membership.

PAR. 3. Respondent, National Association, is subdivided into a dealers' section, which is composed of member dealers, who are designated as "Class A members," and a manufacturers' section, which is composed of member manufacturers, who are designated as "Class B members."

The manufacturers' section, in turn, is subdivided into four groups, as follows: (1) gold group; (2) tooth group; (3) equipment group; and (4) sundry merchandise group.

In addition, the membership of said respondent, National Association, is organized regionally or geographically into nine associations commonly designated as sectional dealers' clubs, as follows: New England group; New York State group; Eastern group; Southern group; Central States group; Midwest group; Southwest group; Pacific coast group; and Canadian Dental Trade Association. Said

dealers' clubs or associations are constituent and component parts of said respondent, National Association.

Respondent, Perry L. Blackshear, is the president and member of the executive board of respondent, National Association, with address at 715 Candler Building, P. O. Box 1686, Atlanta 1, Ga.

Respondent, Howell Evans, is the first vice president and member of the executive board of respondent, National Association, with address c/o American Cabinet Co., Two Rivers, Wis.

Respondent, William O. Patterson, is the second vice president and member of the executive board of respondent, National Association, with address at 970 Lowry Medical Arts Building, P. O. Box 225, St. Paul 2, Minn.

Respondent, Fred Steen, is the treasurer and member of the executive board of respondent, National Association, with address at 211 South Twelfth Street, Philadelphia 5, Pa.

Respondent, Clayton W. Conklin, is a member of the executive board of respondent, National Association, with address c/o The L. D. Caulk Co., Milford, Del.

Respondent, Robert Kerr, Jr., is the chairman, manufacturers' section and member of the executive board of respondent, National Association, with address at 6081–6095 Twelfth Street, Detroit 8, Mich.

Respondent, Milton Goolsby, is the chairman, dealers' section, and member of the executive board of respondent, National Association, with address at 715 Candler Building, P. O. Box 1686, Atlanta 1, Ga.

Respondent, Wilmoth C. Mack, is the secretary of respondent, National Association, with address at 1010 Vermont Avenue NW., Washington 5, D. C.

PAR. 4. Membership of respondent, National Association, is composed of 99 member dealers, 48 member manufacturers, and 6 members who are both dealers and manufacturers.

(*a*) The following respondents are member dealers of respondent National Association:

L. M. Anderson, Dental Supply Co., a corporation, organized under the laws of the State of Florida with its office and principal place of business at 102 Madison Street, P. O. Box 1080, Tampa 1, Fla. Said respondent, having three branch places of business, holds three additional memberships in respondent, National Association.

Atlanta Dental Supply Co., a corporation, organized under the laws of the State of Georgia, with its office and principal place of business at 715 Candler Building, P. O. Box 1686, Atlanta 1, Ga.

E. Benton Taylor, individually and trading as Luther B. Benton Co., having his office and principal place of business at 709–711 North Howard Street, Baltimore 1, Md.

Lewis B. Bignall and Aurta Belle Bignall, individually and as copartners, trading as Bignall Dental Supply formerly known as L. B. Bignall Dental Supplies, having their office and principal place of business at 118 Fulton Street, East, Grand Rapids 2, Mich.

Bridges Dental Supply Co., a corporation, organized under the laws of the State of Colorado with its office and principal place of business at 217 Mack Block, Denver 1, Colo.

The Briggs-Kessler Co., a corporation organized under the laws of the State of Michigan with its office and principal place of business at 28 Adams Avenue, West, Detroit 26, Mich.

The Burkhart Dental Supply Co., a corporation, organized under the laws of the State of Washington with its office and principal place of business located in Tacoma 1, Wash., mailing address P. O. Box 1252.

California Dental Supply Co., a corporation, organized under the laws of the State of California with its office and principal place of business at 643 South Olive Street, Los Angeles 14, Calif. Said respondent, having five branch places of business, holds five additional memberships in respondent National Association.

The A. P. Carey Co., a corporation, organized under the laws of the State of Texas with its office and principal place of business at Medical Arts Building, Dallas 1, Tex. Said respondent, having two branch places of business, holds two additional memberships in respondent National Association.

H. J. Caulkins & Co., a corporation, organized under the laws of the State of Michigan with its office and principal place of business at 505 Capital Park Building, Detroit 31, Mich. Said respondent, having three branch places of business, holds three additional memberships in respondent National Association.

The Chicago Dental Manufacturing Co., a corporation, organized under the laws of the State of Illinois with its office and principal place of business at 1433 Marshall Field Annex, Chicago 2, Ill.

Climax Dental Supply Co., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business at Medical Arts Building, Walnut Street at Sixteenth, Philadelphia 2, Pa.

J. J. Crimmings Co., a member dealer with its principal office and place of business at 120 Boylston Street, Boston 16, Mass. Said respondent, having one branch house, holds one additional member-

ship in respondent National Association. The nature of the business structure of said respondent is unknown to the Commission.

T. M. Crutcher Dental Depot, Inc., a corporation, organized under the laws of the State of Kentucky with its office and principal place of business located in Louisville 1, Ky., mailing address, P. O. Box 686.

T. M. Crutcher Dental Depot, Inc., a corporation, organized under the laws of the State of Indiana, with its office and principal place of business located in the Hume Mansur Building, P. O. Box 94, Indianapolis 6, Ind.

Crutcher Dental Supply Co., a corporation, organized under the laws of the State of Alabama with its office and principal place of business at Frank Nelson Building, Birmingham 1, Ala. Said respondent, having two branch places of business, holds two additional memberships in respondent National Association.

Dakota Dental Supply Co., a corporation, organized under the laws of the State of South Dakota with its office and principal place of business at 108 East Ninth Street, Sioux Falls, S. Dak.

Davidson Dental Supply Co., Inc., a corporation, organized under the laws of the State of Louisiana, with its office and principal place of business at 741 Maison Blanche, P. O. Box 29, New Orleans 6, La. Said respondent, having two branch places of business, holds two additional memberships in respondent National Association.

The Davis-Schultz Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 700 Main Street, Buffalo 2, N. Y.

The Deeley Dental Supply Co., also known as Deeley Dental Supply, a corporation, organized under the laws of the State of Maryland with its office and principal place of business at Medical Arts Building, Baltimore 1, Md.

Dental Service Co., Inc., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 1010-1012 Commerce Building, Erie, Pa.

The Dental Specialty Co., a corporation, organized under the laws of the State of Colorado with its office and principal place of business at 232 Republic Building, Denver 1, Colo.

Dentists & Surgeons Supply Co., Inc., a corporation, organized under the laws of the State of Massachusetts with its offices and principal place of business located at 340 Bridge Street, Springfield 2, Mass.

Dixie Dental Supply Co., a member dealer, with its office and principal place of business at 413–416 Texarkana National Bank Build-

ing, P. O. Box 170, Texarkana, Tex. The nature of the business structure of said respondent is unknown to the Commission.

Margaret Williams and James H. Williams, individually and as copartners, trading as Eastern Dental Supply House, having their office and principal place of business at 19 South Third Street, Easton, Pa.

Eckley Dental Supply Co., Inc., a corporation, organized under the laws of the State of New York with its offices and principal place of business at 9 Rockefeller Plaza, New York 20, N. Y.

Edwards Dental Supply Co., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 450 Sutter Street, San Francisco 8, Calif. Said respondent, having four branch places of business, holds four additional memberships in respondent National Association.

Ferguson Dental Supply Co., a member dealer, with its office and principal place of business at Medical Arts Building, P. O. Box 1539, San Antonio 6, Tex. The nature of the business structure of said respondent is unknown to the Commission.

Fort Wayne Dental Depot, a Corporation, organized under the laws of the State of Indiana with its office and principal place of business located in Fort Wayne 1, Ind., mailing address, P. O. Box 240. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

Frink Dental Supply Co., a corporation, organized under the laws of the State of Illinois with its office and principal place of business at 4753 Broadway, Chicago 40, Ill.

Geo. C. Frye Co., a corporation, organized under the laws of the State of Maine with its office and principal place of business at 116 Free Street, Portland 1, Maine.

Gates Dental Co., Inc., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 227 North Duke Street, P. O. Box 6, Lancaster, Pa.

General Dental Supply Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 19 Union Square, New York 5, N. Y.

Goetze-Niemer Co., a corporation, organized under the laws of the State of Missouri with its office and principal place of business located in St. Joseph 1, Mo., mailing address, P. O. Box 187.

Guterman Dental Supply Co., a corporation, organized under the laws of the State of New York with its office and principal place of business at 515 Madison Avenue, New York 22, N. Y.

The Hamilton Dental Supply Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 83 South Fourth Street, Columbus 16, Ohio.

The Harmeyer & Brand Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 1037 Enquirer Building, Cincinnati 1, Ohio.

Harris Dental Co., Inc., a corporation, organized under the laws of the State of Virginia with its office and principal place of business at Medical Arts Building, P. O. Box 177, Norfolk 1, Va. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

The H. L. Hayden Co., a corporation, organized under the laws of the State of Connecticut with its office and principal place of business at 83 Trumbull Street, New Haven 11, Conn. Said respondent having one branch place of business, holds one additional membership in respondent National Association.

Hebard Dental Supply Co., a corporation, organized under the laws of the State of New York with its office and principal place of business at 20 South Broadway, Yonkers 2, N. Y.

Hill Dental Supply Co., a corporation, organized under the laws of the State of Alabama with its office and principal place of business located in Birmingham, Ala.

John Hood Co., a corporation, organized under the laws of the State of Massachusetts, with its office and principal place of business located at 178 Tremont Street, Boston 12, Mass.

Iowa Dental Supply Co., a member dealer, with its office and principal place of business at 507 Savings & Loan Building, Des Moines 3, Iowa. The nature of the business structure of said respondent is unknown to the Commission.

M. N. Jacobs Dental Supply Co., a corporation, organized under the laws of the State of Iowa with its office and principal place of business at 805 First National Bank Building, Davenport, Iowa.

Johnson & Lund Co., Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 930 Sibley Tower Building, Rochester 4, N. Y.

Johnson-Stipher, Inc., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 230 Hanna Building, Euclid and Fourteenth Street, Cleveland 15, Ohio.

Mary C. Stites, individually and trading as Kalamazoo Dental Supply Co., having her office and principal place of business at 302 American National Bank Building, Kalamazoo 4, Mich.

Kays-Durgin, Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business located in Binghampton, N. Y., mailing address, P. O. Box 935.

Keener Dental Supply Co., a member dealer, with its office and principal place of business at 609 Walnut Street, Knoxville 12, Tenn. Said respondent, having two branch places of business, holds two additional memberships in respondent National Association. The nature of the business structure of said respondent is unknown to the Commission.

Oscar D. Leventhal and Joseph S. Leventhal, individually and as copartners, trading as A. Leventhal & Sons, having their office and principal place of business at 310–312 Adams Avenue, Scranton 1, Pa. Said respondents having one branch place of business, hold one additional membership in respondent National Association.

The W. A. Lockwood Dental Co., Inc., a corporation, organized under the laws of the State of West Virginia with its office and principal place of business at 1722 Eye Street NW., Washington 6, D. C.

Long Island Dental Depot, a corporation, organized under the laws of the State of New York with its office and principal place of business at 164–07 Hillside Avenue, Jamaica 2, N. Y.

Los Angeles Dental Supply Co., a corporation, organized under the laws of California with its office and principal place of business at 617 South Olive Street, Los Angeles 14, Calif. Said respondent having one branch place of business, holds one additional membership in respondent National Association.

W. E. Lowry and Mary H. Lowry, individually and as copartners trading as Lowry Dental Supplies, having their office and principal place of business at 805 Lee Street, Charleston 23, W. Va.

Mabee-Kanenbley, Inc., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 1 Hanson Place, Brooklyn 17, N. Y.

Medcalf & Thomas, a corporation, organized under the laws of the State of Texas with its office and principal place of business at Medical Arts Building, Fort Worth 1, Tex. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

Melrose Dental Depot, Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 41 East Forty-second Street, New York 17, N. Y.

E. L. Mercere, Inc., a member dealer, with its office and principal place of business located at 99 South Second Street, Memphis 1,

Tenn. The nature of the business structure of said respondent is unknown to the Commission.

Midvale Dental Supply Co., a corporation, organized under the laws of Missouri with its office and principal place of business at 3638 Olive Street, St. Louis 8, Mo.

E. R. Mitchell Dental Depot, a corporation, organized under the laws of the State of Massachusetts with its office and principal place of business at 390 Main Street, Worcester 8, Mass. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

Mohawk Dental Supply Co., a member dealer, with its office and principal place of business at 258 Genesee Street, Utica 2, N. Y. The nature of the business structure of said respondent is unknown to the Commission.

Harold S. Moore, Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 90 State Street, Albany 1, N. Y. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

Mossey-Otto Co., a corporation, organized under the laws of the State of Wisconsin with its office and principal place of business at 615 North Sixteenth Street, Milwaukee 1, Wis.

Nashville Dental Supply Co., a corporation, organized under the laws of the State of Tennessee with its office and principal place of business at 160 Eighth Avenue North, Nashville 2, Tenn.

Norton-Starr, Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at the State Tower Building, Syracuse 2, N. Y. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

M. F. Patterson Dental Supply Co., a corporation, organized under the laws of the State of Minnesota with its office and principal place of business at 970 Lowry Medical Arts Building, P. O. Box 225, St. Paul 2, Minn. Said respondent, having 19 branch places of business, holds 19 additional memberships in respondent National Association.

Pattison-McGrath Co., a corporation, organized under the laws of the State of Missouri with its office and principal place of business at 1117 Walnut Street, Kansas City 13, Mo.

Pearce Dental Supply Co., a corporation, organized under the laws of the State of Kansas with its office and principal place of business at 212 North Market Street, Wichita 2, Kans. Said respondent,

having two branch places of business, holds two additional memberships in respondent National Association.

Pendleton & Arto, Inc., a corporation, organized under the laws of the State of Texas with its office and principal place of business at Medical Arts Building, Houston 1, Tex.

Pittsburgh Dental Depot, Inc., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business at Pitt Bank Building, Pittsburgh 22, Pa.

Powers & Anderson Dental Co., Inc., a corporation, organized under the laws of the State of Virginia with its office and principal place of business at 2 South Fifth Street, P. O. Box 712, Richmond 6, Va. Said respondent, having four branch places of business, holds four additional memberships in respondent National Association.

Primrose-Johnson Dental Co., Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 809 Temple Building, Rochester 4, N. Y.

R. & E. Dental Supply Co., a corporation, organized under the laws of the State of New York with its office and principal place of business at 307 Lenox Avenue, New York 27, N. Y.

S. H. Reynolds' Sons Co., a corporation organized under the laws of the State of Massachusetts, with its office and principal place of business at 100 Boylston Street, Boston 16, Mass.

Rose Dental Depot, a member dealer, with its office and principal place of business at 505 Boyle Building, Little Rock, Ark. The nature of the business structure of said respondent is unknown to the Commission.

Rovane Dental Supply Co., a corporation, organized under the laws of the State of Iowa with its office and principal place of business at State Central Savings Bank Building, Keokuk, Iowa.

Edward H. Rowan Dental Supplies, Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 1501 Broadway at Forty-third Street, New York 18, N. Y.

Russell-Altenberg Co., a corporation, organized under the laws of the State of Maine with its office and principal place of business at 15 Mellen Street, Portland 4, Maine.

Smith-Holden, Inc., a corporation, organized under the laws of the State of Rhode Island with its office and principal place of business at 144 Westminster Street, Lauderdale Building, Providence 1, R. I. Said respondent, having two branch places of business, holds two additional memberships in respondent National Association.

Thau-Nolde, Inc., a corporation, organized under the laws of the State of Missouri with its office and principal place of business at 601–621 Frisco Building, St. Louis 1, Mo. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

Thompson Dental Co., a corporation, organized under the laws of the State of South Carolina with its office and principal place of business at 1508 Washington Street, Columbia (A), S. C. Said respondent, having three branch places of business, holds three additional memberships in respondent National Association.

C. M. Lowry and D. Z. Lowry, individually and as copartners, trading as Tri-State Dental Depot, having their office and principal place of business in the Guaranty Bank Building, Huntington 18, W. Va. Said respondents, having one branch place of business, hold one additional membership in respondent National Association.

Tri-State Dental Supply Co., a corporation, organized under the laws of the State of Arizona with its office and principal place of business at 500 Professional Building, Phoenix, Ariz. Said respondent, having three branch places of business, holds three additional memberships in respondent National Association.

B. D. Van Kleeck, a member dealer, with its office and principal place of business at 90 Market Street, Poughkeepsie, N. Y. The nature of the business structure of said respondent is unknown to the Commission.

E. L. Washburn & Co., Inc., a corporation, organized under the laws of the State of Connecticut with its office and principal place of business at 71 Whitney Avenue, New Haven, Conn. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

The Weber Dental Equipment Co. Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 500 Fifth Avenue, New York 18, N. Y.

John Welch Dental Depot, Inc., a corporation, organized under the laws of the State of Oregon with its office and principal place of business at Morgan Building, Portland 8, Oreg.

Western Dental Supply Co., a corporation, organized under the laws of the State of Utah with its office and principal place of business at 506–507 Judge Building, Salt Lake City 14, Utah.

White-Rafert Co., a corporation, organized under the laws of the State of Indiana with its office and principal place of business at 114 South Sixth Street, Terre Haute, Ind.

Wright's Inc., formerly trading as Wright Dental Supply Co., a corporation, organized under the laws of the State of Wisconsin with its office and principal place of business located in Milwaukee 1, Wis., mailing address, P. O. Box 725. Said respondent, having one branch place of business, holds one additional membership in respondent National Association.

(*b*) The following respondents are member manufacturers of respondent, National Association:

The American Cabinet Co., a member manufacturer, with its office and principal place of business at Two Rivers, Wis. The nature of the business structure of said respondent is unknown to the Commission.

The American Platinum Works, a member manufacturer, with its office and principal place of business located at New Jersey Railroad Avenue at Oliver Street, Newark 5, N. J. The nature of the business structure of said respondent is unknown to the Commission.

American Sterilizer Co., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business located in Erie, Pa.

The W. V-B. Ames Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 137 North Adams Street, Fremont, Ohio.

Claudius Ash Sons & Co., U. S. A., Inc., a member manufacturer, with its office and principal place of business at 127–131 Coit Street, Irvington 11, N. J. The nature of the business structure of said respondent is unknown to the Commission.

Harry J. Bosworth Co., a corporation, organized under the laws of the State of Illinois with its office and principal place of business at 1315 South Michigan Avenue, Chicago 5, Ill.

Wilmot Castle Co., a member manufacturer, with its office and principal place of business at 1255 University Avenue, Rochester 7, N. Y. The nature of the business structure of said respondent is unknown to the Commission.

H. M. Chandler Co., a member manufacturer, with its office and principal place of business at 108 West Forty-second Street, New York 18, N. Y. The nature of the business structure of said respondent is unknown to the Commission.

Chayes Dental Instrument Corp., a corporation, organized under the laws of the State of New York with its office and principal place of business at 460 West Thirty-fourth Street, New York 1, N. Y.

The Cleveland Dental Manufacturing Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 3307 Scranton Road SW., Cleveland 1, Ohio.

The Columbus Dental Manufacturing Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 634 Wager Street, Columbus 6, Ohio.

P. N. Condit, a member manufacturer, with its office and principal place of business located in Boston 17, Mass. The nature of the business structure of said respondent is unknown to the Commission.

Cook-Waite Laboratories, Inc., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 170 Varick Street, New York 13, N. Y. Said respondent has a subsidiary corporation to wit: Cook-Waite Laboratories, Inc., located at Fort Erie North, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Assocition, a constituent and component part of respondent National Association.

Thomas J. Dee & Co., a corporation, organized under the laws of the State of Illinois with its office and principal place of business at 1900 West Kinzie Street, Chicago 22, Ill.

Densco, Inc., formerly trading as the Dental Specialty Manufacturing Co., a corporation, organized under the laws of the State of Colorado with its office and principal place of business located in Denver 1, Colo., mailing address, P. O. Box 420.

Dental Products Co., a corporation, organized under the laws of the State of Illinois with its office and principal place of business at 7512 Greenwood Avenue, Chicago 19, Ill.

J. C. & A. L. Fawcett, Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 408 Jay Street, Brooklyn 1, N. Y.

General Electric X-Ray Corp., a member manufacturer, with its office and principal place of business at 175 West Jackson Boulevard, Chicago 4, Ill. Said respondent is a subsidiary of and wholly owned by the General Electric Co. The parent company is a corporation organized and existing under the laws of the State of New York with its principal executive offices located at 1 River Road, Schenectady, N. Y.

General Refineries, Inc., a corporation, organized under the laws of the State of Minnesota with its office and principal place of business at 27 North Fourth Street, Minneapolis 1, Minn.

Gomco Surgical Manufacturing Corp., a corporation, organized under the laws of the State of New York with its office and principal place of business at 828 East Ferry Street, Buffalo 11, N. Y.

The Hygienic Dental Rubber Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at 31 West Market Street, Akron 8, Ohio.

Hattie A. Ivory and Chester Scott Ivory, individually and as copartners, trading as J. W. Ivory, having their office and principal place of business at 310–312 North Sixteenth Street, Philadelphia 2, Pa.

J. F. Jelenko & Co., Inc., a corporation, organized under the laws of the State of New York with its office and principal place of business at 136 West Fifty-second Street, New York 19, N. Y.

Johnson & Johnson, a corporation, organized under the laws of the State of New Jersey with its office and principal place of business at New Brunswick, N. J.

H. D. Justi & Son, Inc., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business at Thirty-second and Spring Garden Street, Philadelphia 4, Pa.

Kerr Manufacturing Co., a corporation, organized under the laws of the State of Michigan with its office and principal place of business at 6081–6095 Twelfth Street, Detroit 8, Mich.

King's Specialty Co., a corporation, organized under the laws of the State of Indiana with its office and principal place of business located in Fort Wayne 1, Ind., mailing address, P. O. Box 240.

McKesson Appliance Co., a member manufacturer, with its office and principal place of business at 2226 Ashland Avenue, Toledo 10, Ohio. The nature of the present business structure of said respondent is unknown since the dissolution of its corporate status on February 15, 1940.

John V. Hastings, Jr., and Henry B. Robb, Jr., individually and as copartners, trading as Morgan, Hastings & Co., having their office and principal place of business at 2314 Market Street, Philadelphia 3, Pa.

The J. Bird Meyer Co., Inc., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business at 117–121 North Fifth Street, Philadelphia 6, Pa.

Mynol Chemical Co., Inc., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 5217 Whitby Avenue, Philadelphia 43, Pa.

The J. M. Ney Co., a corporation, organized under the laws of the State of Connecticut with its office and principal place of business at 71 Elm Street, Hartford 1, Conn.

Novocol Chemical Manufacturing Co., Inc., a corporation, organized under the laws of the State of New York with its office and

principal place of business at 2921–2923 Atlantic Avenue, Brooklyn 7, N. Y. Said respondent has a subsidiary corporation, to wit: Novocal Chemical Manufacturing Co. of Canada, Ltd., located at 11–13 Grenville Street, Toronto, Ontario Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

The Ohio Chemical & Manufacturing Co., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 1400 East Washington Avenue, Madison 3, Wis.

The Pelton & Crane Co., a corporation, organized under the laws of the State of Michigan with its office and principal place of business at 632–652 Harper Avenue, Detroit 2, Mich.

Geo. P. Pilling & Son Co., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business at 3451 Walnut Street, Philadelphia 4, Pa.

Puritan Compressed Gas Corp., a corporation, organized under the laws of the State of Missouri with its office and principal place of business at 2012 Grand Avenue, Kansas City 8, Mo.

Rinn X-Ray Products, Inc., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at 3039 Fullerton Avenue, Chicago 47, Ill.

Ritter Co., Inc., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at P. O. Box 848, Ritter Park, Rochester 3, N. Y.

The Silv-O-Dent Co., a member manufacturer, with its office and principal place of business at 1708 Northeast Alberta Street, Portland 11, Oreg. The nature of the business structure of said respondent is unknown to the Commission.

William N. Force, individually and trading as E. E. Smith, having his office and principal place of business at 1232 Race Street, Philadelphia 7, Pa.

Lee S. Smith & Son Manufacturing Co., a member manufacturer, with its office and principal place of business located at 7325 Pennsylvania Avenue, Pittsburgh 8, Pa. The nature of the business structure of said respondent is unknown to the Commission.

Spyco Smelting & Refining Co., a corporation, organized under the laws of the State of Minnesota with its office and principal place of business at 51 South Third Street, Minneapolis 1, Minn.

Vernon-Benshoff Co., a corporation, organized under the laws of the State of Pennsylvania with its office and principal place of business located in Pittsburgh 30, Pa., mailing address P. O. Box 1587.

The Weber Dental Manufacturing Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business at Crystal Park, Canton 5, Ohio.

H. B. Wiggin's Sons Co., a member manufacturer, with its office and principal place of business at Arch Street, Bloomfield, N. J. The nature of the business structure of said respondent is unknown to the Commission.

Williams Gold Refining Co., Inc., a corporation organized under the laws of the State of New York with its office and principal place of business at 2978 Main Street, Buffalo 14, N. Y. Said respondent has a subsidiary corporation, to wit: The Williams Gold Refining Co. of Canada, Ltd., located in Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

Young Dental Manufacturing Co., a corporation, organized under the laws of the State of Missouri with its office and principal place of business at 4958–4960 Suburban R. W., St. Louis 8, Mo.

(*c*) The following respondents are both member dealers and member manufacturers of respondent National Association:

Buffalo Dental Manufacturing Co., a corporation, organized under the laws of the State of New York with its dealer office located at 775 Main Street, Buffalo 2, N. Y., and its manufacturing office located at 145 Kehr Street, Buffalo 11, N. Y.

The L. D. Caulk Co., a corporation, organized under the laws of the State of Delaware with its office and principal place of business at Milford, Del. Said respondent, having 11 branch places of business, holds 11 additional memberships in respondent National Association. Said respondent has a subsidiary corporation to wit: The L. D. Caulk Co. of Canada, Ltd., located at Caulk Bldg., 178 John St., Toronto, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of the respondent National Association.

The Dentists' Supply Co. of New York, a corporation, organized under the laws of the State of New York with its office and principal place of business at 220 West Forty-second Street, New York 18, N. Y.

Goldsmith Bros. Co. also known as Goldsmith Bros. Smelting & Refining Co., a corporation, organized under the laws of the State of Illinois with its office and principal place of business at 58 East Washington Street, Chicago 2, Ill. Said respondent has a subsidiary corporation, to wit: Goldsmith Bros. Smelting & Refining Co., Ltd., located in Canada and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of re-

spondent National Association. Said subsidiary also wholly owns another member of the Canadian Dental Trade Association, to wit: The Dominion Dental Co., Ltd., located at Toronto, Ontario, Canada.

The Ransom & Randolph Co., a corporation, organized under the laws of the State of Ohio with its office and principal place of business located at Toledo 1, Ohio, mailing address, P. O. Box 905. Said respondent, having 13 branch places of business, holds 13 additional memberships in respondent National Association.

The S. S. White Dental Manufacturing Co., a corporation organized under the laws of the State of Pennsylvania with its office and principal place of business at 211 South Twelfth Street, Philadelphia 5, Pa. Said respondent, having 17 branch places of business, holds 17 additional memberships in respondent National Association. Said respondent has a subsidiary corporation, to wit: S. S. White Co. of Canada Limited, located at 250 College Street, Toronto, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

Respondents named and described in this paragraph constitute the entire membership of said respondent National Association except for two member dealers in the Territory of Hawaii and seven member dealers in Canada.

PAR. 5. The respondent National Association is not engaged in the business of manufacturing, purchasing, selling, and distributing of dental goods, as herein described. But said respondent has aided, abetted, guided, and assisted respondent member manufacturers and member dealers in the unlawful acts and practices herein alleged.

PAR. 6. The respondent member manufacturers and member dealers are now and have been for more than 10 years last past engaged in manufacturing, purchasing, selling, and distributing the products herein described in commerce among and between the various States of the United States and in the District of Columbia and have caused said products, when sold, to be shipped to the purchasers thereof located in States of the United States other than in the State of origin of said shipment. Said respondents, during all the time herein described carried on a constant course of trade in commerce in said products as is herein set forth.

PAR. 7. Prior to the unlawful agreement, combination and conspiracy herein alleged, the respondent member manufacturers and member dealers were in competition with one another in manufacturing, purchasing, selling, and distributing the products herein described in commerce within the intent and meaning of the Federal Trade Com-

mission Act, and were and are now in competition with others engaged in the same business. Said respondents would now be in competition with one another were it not for the aforementioned agreement, combination and conspiracy.

PAR. 8. Respondent member manufacturers and member dealers sell and distribute in excess of 75 percent of the volume of dental goods manufactured, sold, and distributed in the United States, and by reason of said fact possess the ability and means of dominating and controlling the dental goods industry in the United States.

PAR. 9. For more than 10 years last past, respondent member manufacturers and member dealers, together with respondent National Association and its respondent officers with the aid, assistance, and cooperation of its component dealers' clubs or associations and manufacturers' groups entered into and have since carried out an unlawful agreement, combination, understanding and conspiracy to hinder, lessen, eliminate, limit, and restrain competition in prices and otherwise between and among respondent member manufacturers and member dealers in the manufacture, purchase, sale, and distribution of dental goods in commerce among and between the various States of the United States and the District of Columbia, and to monopolize within themselves the manufacture and sale, purchase, sale, and distribution of said products in said commerce. Pursuant to and in furtherance of said understanding, agreement, combination, and conspiracy, and a planned common course of action, the respondent member manufacturers and member dealers, through and with the aid, assistance, and guidance of respondent, National Association and its respondent officers, dealers clubs, or associations, have done and performed, among others, the following acts and practices:

(*a*) Classified dental goods and agreed upon exact retail prices at which the various classifications of dental goods should be sold to both dealers and the ultimate consumers.

(*b*) Agreed upon uniform rates of discount at which dealers could purchase dental goods from manufacturers.

(*c*) Agreed upon uniform terms of credit at which dental goods should be sold to dentists, and other consumers.

(*d*) Agreed upon and fixed uniform terms and prices to be allowed for used dental equipment when taken in exchange for new equipment and agreed upon uniform prices to be charged for and uniform terms of sale for such used equipment.

(*e*) Agreed to disseminate, and do disseminate, among themselves and by and through respondent National Association at frequent intervals current and future quotations of prices, terms, and conditions

of sale offered to the trade by various respondent member manufacturers and member dealers.

(*f*) Have held meetings at which prices, terms, and conditions of sale, and trade practices and policies designed to eliminate competition in price and otherwise between respondents were discussed and acted upon.

(*g*) Agreed upon a division of territory among the various respondent member dealers in such manner as to result in a minimum of competition among said member dealers.

(*h*) Established a system of policing the industry whereby deviations from pricing and selling policies and practices are reported to appropriate officers and committee of said respondent National Association, and to the sectional dealers' clubs, all of whom thereafter by various and sundry methods bring pressure to bear upon the alleged price violator, with the result that the agreed upon pricing and selling policies and practices are adhered to in future transactions.

(*i*) Agreed and do cause all dealers in dental goods to sell products of respondent member manufacturers at prices fixed and prescribed by said member manufacturers.

(*j*) Prevent independent dealers from obtaining merchandise for resale by such practices as buying the entire output of manufacturers engaged in selling to independent dealers, buying from manufacturers upon the understanding that such manufacturers will sell to member dealers only, and charging independent dealers consumer prices.

(*k*) Agreed to and do cause member dealers to buy only from member manufacturers.

(*l*) Agreed to and do cause member manufactures to sell only to member dealers.

(*m*) Agreed to and do cause respondent member manufacturers and member dealers not to sell respondent member manufacturers' products to jobbers or to those with whom trade relations have not been established by respondent manufacturers, thereby preventing independent dealers from obtaining the products of respondent manufacturers.

(*n*) Agreed to and do systematically disparage independent manufacturers and dealers and the dental products manufactured, sold and distributed by said independent manufacturers and dealers. Independent manufacturers and dealers are characterized as "gripsackers," "carpetbaggers," "illegitimate manufacturers," "illegitimate dealers," "price-cutters," "unauthorized," "unrecognized," "unreliable," and other derogatory names, as contrasted to member manufacturers and dealers who are characterized as "legitimate," "authorized," recog-

nized," or "reliable" manufacturers and dealers. Said disparagement is applied to the products of independent manufacturers and dealers, said products being referred to as "illegitimate," "substandard goods," "off-brand merchandise," "cheap quality merchandise," "monkey brands," and similar names, as contrasted to the products of member manufacturers and dealers, which are referred to as "authorized," "legitimate," "quality merchandise," or "standard products."

PAR. 10. The capacity, tendency, and effect of the understanding, agreement, combination, and conspiracy hereinbefore described and the acts and practices of the respondents done and performed in furtherance thereof, and pursuant thereto, and now and have been to substantially lessen, restrain, and suppress competition among and between said respondent member manufacturers and member dealers, in the manufacture, sale, and distribution of said products in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act; have a dangerous tendency to and have actually hindered, restricted, and prevented competition in price and otherwise between and among said respondents in the manufacture, sale, and distribution of said products in said commerce; have empowered and enabled the respondents to control the market and enhance the prices paid by purchasers of said products; and have a dangerous tendency to create monopoly in said respondents in the manufacture, sale, and distribution of said products in interstate commerce.

PAR. 11. The acts and practices of the respondents as herein alleged are all to the injury and prejudice of the public and competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 1, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto and the assignment of a trial examiner by the Commission, all of the said respondents except the respondents, the American Platinum Works, Wilmoth C. Mack and Milton Goolsby, who filed motions to dismiss as to themselves, upon leave granted by the trial examiner, withdrew their original answers

and in lieu thereof filed answers in which, solely for this proceeding, they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Certain stipulations of fact were entered into between counsel supporting the complaint and counsel for the respondents, the American Platinum Works, General Electric X-Ray Corp., and the Ohio Chemical & Manufacturing Co., and were made a part of the record. After the closing of the record, suggested findings as to the facts and suggested order were submitted to the trial examiner by counsel supporting the complaint and counsel for the respondents, and in due time the trial examiner made his recommended decision.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' substitute answers thereto, the aforesaid stipulations, the trial examiner's recommended decision, certain written memoranda and oral argument of counsel as to the form of order to be issued; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The words and terms set out in this paragraph, wherever used in this findings as to the facts and conclusion, shall have the following meanings:

(*a*) "Dental goods" means instruments, appliances, alloys, cement, artificial teeth, drugs and compounds, chairs and office furniture, and all other articles or products employed in the practice of the dental profession.

(*b*) "Member manufacturer" means an individual, partnership or corporation engaged in the manufacture, sale and distribution of dental goods and holding membership in the respondent, American Dental Trade Association.

(*c*) "Member dealer" means an individual, partnership, or corporation engaged in the sale and distribution of dental goods and holding membership in the respondent, American Dental Trade Association.

(*d*) "Independent manufacturer" means an individual, partnership, or corporation engaged in the manufacture, sale and distribution of dental goods and not holding membership in the respondent, American Dental Trade Association.

(*e*) "Independent dealer" means an individual, partnership, or corporation engaged in the sale and distribution of dental goods and not

holding membership in the respondent, American Dental Trade Association.

PAR. 2. The respondent, American Dental Trade Association, hereinafter referred to as National Association, is a voluntary unincorporated association, organized by and composed of individuals, partnerships, and corporations who are engaged in the business of manufacturing, purchasing, selling, and distributing dental goods in commerce among and between the various States of the United States, the District of Columbia, United States Territories, and various foreign countries. Said association has its principal office and place of business at 1010 Vermont Avenue NW., Washington, D. C.

The respondent, National Association, was organized for the purpose of:

(*a*) Fostering and promoting the best interests of the trade or industry.

(*b*) Collecting and disseminating facts concerning the trade or industry.

(*c*) Fostering and maintaining common pricing policies for dental goods among its membership.

(*d*) Confining and monopolizing the trade in dental goods within its membership.

PAR. 3. The respondent, National Association, is subdivided into a dealers' section, which is composed of member dealers, who are designated as "Class A members" and a manufacturers' section, which is composed of member manufacturers, who are designated as "Class B members."

The manufacturers' section, in turn, is subdivided into four groups, as follows: (1) gold group, (2) equipment group, (3) tooth group, (4) sundry merchandise group.

In addition, the membership of said respondent, National Association, is organized regionally or geographically into nine associations commonly designated as sectional dealers' clubs, as follows: New England group; New York State group; Eastern group; Southern group; Central States group; Midwest group; Southwest group; Pacific coast group; and Canadian Dental Trade Association. Said dealers' clubs or associations are constituent and component parts of said respondent, National Association.

Respondent, Perry L. Blackshear, is the president and a member of the executive board of respondent National Association, with his address at 715 Candler Building, P. O. Box 1686, Atlanta, Ga.

Respondent, Howell Evans, is the first vice president and a member of the executive board of respondent National Association, with his address % American Cabinet Co., Two Rivers, Wis.

Respondent, William O. Patterson, is the second vice president and a member of the executive board of respondent National Association, with his address at 970 Lowry Medical Arts Building, P. O. Box 225, St. Paul, Minn.

Respondent, Fred Steen, is the treasurer and a member of the executive board of respondent National Association, with his address at 211 South Twelfth Street, Philadelphia 5, Pa.

Respondent, Clayton W. Conklin, is a member of the executive board of respondent National Association, with his address % The L. D. Caulk Co., Milford, Del.

Respondent, Robert Kerr, Jr., is the chairman, manufacturers' section, and a member of the executive board of respondent National Association, with his address at 6081–6095 Twelfth Street, Detroit 8, Mich.

Respondent, Milton Goolsby, an individual whose address is 715 Candler Building, P. O. Box 1686, Atlanta, Ga., was formerly chairman of the dealers' section and a member of the executive board of respondent National Association, but his term of office in both of said capacities expired in November 1948, a period of 3 months before the filing of the complaint herein. The trial examiner, acting upon an appropriate motion, dismissed the complaint as to this respondent, to which action of the trial examiner no exception was taken by counsel supporting the complaint.

Respondent, Wilmoth C. Mack, whose address is 1010 Vermont Avenue NW., Washington 5, D. C., is the secretary of respondent National Association, but was not employed in such capacity until May 1, 1947, prior to which time he had had no contact with any of the respondents herein. The trial examiner, acting upon an appropriate motion, dismissed the complaint as to this respondent, to which action of the trial examiner no exception was taken by counsel supporting the complaint.

PAR. 4. The membership of respondent National Association is composed of 99 member dealers, 48 member manufacturers, and 6 members who are both dealers and manufacturers.

(*a*) The following respondents are member dealers of respondent National Association:

L. M. Anderson Dental Supply Co., a corporation, organized under the laws of the State of Florida, with its office and principal place of

business at 102 Madison Street, P. O. Box 1080, Tampa, Fla. This respondent, having three branch places of business, holds three additional memberships in respondent National Association.

Perry L. Blackshear and G. Milton Goolsby, as copartners, trading as Atlanta Dental Supply Co., with their office and principal place of business at 715 Candler Building, P. O. Box 1686, Atlanta, Ga. These respondents were erroneously described in the complaint as Atlanta Dental Supply Co., a corporation.

E. Benton Taylor, an individual trading as Luther B. Benton Co., having his office and principal place of business at 709–711 North Howard Street, Baltimore 1, Md.

Lewis B. Bignall and Aurta Belle Bignall, individuals and copartners, trading as Bignall Dental Supply, formerly known as L. B. Bignall Dental Supplies, having their office and principal place of business at 118 Fulton Street, East, Grand Rapids 2, Mich.

Bridges Dental Supply Co., a corporation, organized under the laws of the State of Colorado, with its office and principal place of business at 217 Mack Block, Denver 1, Colo.

The Briggs-Kessler Co., a corporation, organized under the laws of the State of Michigan, with its office and principal place of business at 28 Adams Avenue, West, Detroit 26, Mich.

The Burkhart Dental Supply Co., a corporation, organized under the laws of the State of Washington, with its office and principal place of business located in Tacoma, Wash., mailing address P. O. Box 1252.

California Dental Supply Co., a corporation, organized under the laws of the State of California, with its office and principal place of business at 643 South Olive Street, Los Angeles 14, Calif. This respondent, having five branch places of business, holds five additional memberships in respondent National Association.

The A. P. Cary Co., a corporation, organized under the laws of the State of Texas, with its office and principal place of business in the Medical Arts Building, Dallas 1, Tex. This respondent, having two branch places of business, holds two additional memberships in respondent National Association.

H. J. Caulkins & Co., a corporation, organized under the laws of the State of Michigan, with its office and principal place of business at 505 Capital Park Building, Detroit 31, Mich. This respondent, having three branch places of business, holds three additional memberships in respondent National Association.

The Chicago Dental Manufacturing Co., a corporation, organized under the laws of the State of Illinois, with its office and principal place of business at 1433 Marshall Field Annex, Chicago 2, Ill.

Climax Dental Supply Co., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business in the Medical Arts Building, Walnut Street at Sixteenth, Philadelphia 2, Pa.

J. J. Crimmings Co., with its principal office and place of business at 120 Boylston Street, Boston 16, Mass. This respondent, having one branch house, holds one additional membership in respondent National Association.

T. M. Crutcher Dental Depot, Inc., a corporation, organized under the laws of the State of Kentucky, with its office and principal place of business at Louisville, Ky., mailing address P. O. Box 686.

T. M. Crutcher Dental Depot, Inc., a corporation, organized under the laws of the State of Indiana, with its office and principal place of business in the Hume Mansur Building, P. O. Box 94, Indianapolis, Ind.

Crutcher Dental Supply Co., a corporation, organized under the laws of the State of Alabama, with its office and principal place of business at Frank Nelson Building, Birmingham 1, Ala. This respondent, having two branch places of business, holds two additional memberships in respondent National Association.

Dakota Dental Supply Co., a corporation, organized under the laws of the State of South Dakota, with its office and principal place of business at 108 East Ninth Street, Sioux Falls, S. Dak.

Davidson Dental Supply Co., Inc., a corporation, organized under the laws of the State of Louisiana, with its office and principal place of business at 741 Maison Blanche, P. O. Box 29, New Orleans, La. This respondent, having two branch places of business, holds two additional memberships in respondent National Association.

The Davis-Schultz Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 700 Main Street, Buffalo 2, N. Y.

The Deeley Dental Supply Co., also known as Deeley Dental Supply, a corporation, organized under the laws of the State of Maryland, with its office and principal place of business in the Medical Arts Building, Baltimore 1, Md.

Dental Service Co., Inc., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 1010–1012 Commerce Building, Erie, Pa.

The Dental Specialty Co., a corporation, organized under the laws of the State of Colorado, with its office and principal place of business at 232 Republic Building, Denver 1, Colo.

Dentists & Surgeons Supply Co., Inc., a corporation, organized under the laws of the State of Massachusetts, with its office and principal place of business at 340 Bridge Street, Springfield 2, Mass.

Dixie Dental Supply Co., with its office and principal place of business at 413–416 Texarkana National Bank Building, P. O. Box 170, Texarkana, Tex.

Margaret Williams and James H. Williams, trading as Easton Dental Supply House in the capacity of trustees of the estate of Nathan B. Williams, having their office and principal place of business at 19 South Third Street, Easton, Pa. These respondents were erroneously described in the complaint as Margaret Williams and James H. Williams, individually and as copartners, trading as Easton Dental Supply House.

Eckley Dental Supply Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 9 Rockefeller Plaza, New York 20, N. Y.

Edwards Dental Supply Co., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 450 Sutter Street, San Francisco 8, Calif. This respondent, having four branch places of business, holds four additional memberships in respondent National Association.

Ferguson Dental Supply Co., with its office and principal place of business in the Medical Arts Building, P. O. Box 1539, San Antonio 6, Tex.

Fort Wayne Dental Depot, a corporation, organized under the laws of the State of Indiana, with its office and principal place of business in Fort Wayne, Ind., mailing address, P. O. Box 240. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

Frink Dental Supply Co., a corporation, organized under the laws of the State of Illinois, with its office and principal place of business at 4753 Broadway, Chicago 40, Ill.

Geo. C. Frye Co., a corporation, organized under the laws of the State of Maine, with its office and principal place of business at 116 Free Street, Portland 1, Maine.

Gates Dental Co., Inc., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 227 North Duke Street, P. O. Box 6, Lancaster, Pa.

General Dental Supply Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 19 Union Square, New York 5, N Y.

Goetze-Niemer Physician & Dental Supply Co., a corporation, organized under the laws of the State of Missouri, with its office and principal place of business in St. Joseph, Mo., mailing address, P. O. Box 187. This respondent was erroneously described in the complaint as Goetze-Niemer Co., a corporation.

Guterman Dental Supply Co., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 515 Madison Avenue, New York 22, N. Y.

The Hamilton Dental Supply Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 83 South Fourth Street, Columbus 16, Ohio.

The Harmeyer & Brand Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 1037 Enquirer Building, Cincinnati 1, Ohio.

Harris Dental Co., Inc., a corporation, organized under the laws of the State of Virginia, with its office and principal place of business in the Medical Arts Building, P. O. Box 177, Norfolk, Va. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

The H. L. Hayden Co., a corporation, organized under the laws of the State of Connecticut, with its office and principal place of business at 83 Trumbull Street, New Haven 11, Conn. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

Hebard Dental Supply Co., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 20 South Broadway, Yonkers 2, N. Y.

Hill Dental Co., Inc., a corporation, organized under the laws of the State of Alabama, with its office and principal place of business in Birmingham, Ala. This respondent was erroneously described in the complaint as Hill Dental Supply Co., a corporation.

John Hood Co., a corporation, organized under the laws of the State of Massachusetts, with its office and principal place of business at 178 Tremont Street, Boston 12, Mass.

Noche Cacciatore and Carl Cacciatore, individuals and copartners, trading as Iowa Dental Supply Co., with their office and principal place of business at 507 Savings and Loan Building, Des Moines 3, Iowa. These respondents were erroneously described in the complaint as Iowa Dental Supply Co.

M. N. Jacobs Dental Supply Co., a corporation, organized under the laws of the State of Iowa, with its office and principal place of business at 805 First National Bank Building, Davenport, Iowa.

Johnson & Lund Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 930 Sibley Tower Building, Rochester 4, N. Y.

Johnson-Stipher, Inc., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 230 Hanna Building, Euclid and Fourteenth Street, Cleveland 15, Ohio.

Mary C. Stites, an individual, trading as Kalamazoo Dental Supply Co., having her office and principal place of business at 302 American National Bank Building, Kalamazoo 4, Mich.

Kays-Durgin, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business in Binghamton, N. Y., mailing address, P. O. Box 935.

Keener Dental Supply Co., with its office and principal place of business at 609 Walnut Street, Knoxville 12, Tenn. This respondent, having two branch places of business, holds two additional memberships in respondent National Association.

Oscar D. Levanthal and Joseph S. Levanthal, individuals and copartners, trading as A. Levanthal & Sons, having their office and principal place of business at 310–312 Adams Avenue, Scranton 1, Pa. These respondents, having one branch place of business, hold one additional membership in respondent National Association.

The W. A. Lockwood Dental Co., Inc., a corporation, organized under the laws of the State of West Virginia, with its office and principal place of business at 1722 Eye Street NW., Washington D. C.

Long Island Dental Depot, a corporation, organized under the laws of the State of New York, with its office and principal place of business at 164–07 Hillside Avenue, Jamaica 2, N. Y.

Los Angeles Dental Supply Co., a corporation, organized under the laws of California, with its office and principal place of business at 617 South Olive Street, Los Angeles 14, Calif. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

W. E. Lowry and Mary H. Lowry, individuals and copartners, trading as Lowry Dental Supplies, having their office and principal place of business at 710½ Lee Street, Charleston 23, W. Va.

Mabee-Kanenbley, Inc., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 1 Hanson Place, Brooklyn 17, N. Y.

Medcalf & Thomas, a corporation, organized under the laws of the State of Texas, with its office and principal place of business in the Medical Arts Building, Fort Worth 1, Tex. This respondent, having

one branch place of business, holds one additional membership in respondent National Association.

Melrose Dental Depot, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 41 East Forty-second Street, New York 17, N. Y.

E. L. Mercere, Inc., with its office and principal place of business at 99 South Second Street, Memphis 1, Tenn.

Midvale Dental Supply Co., a corporation, organized under the laws of the State of Missouri, with its office and principal place of business at 3638 Olive Street, St. Louis 8, Mo.

E. R. Mitchell Dental Depot, a corporation, organized under the laws of the State of Massachusetts, with its office and principal place of business at 390 Main Street, Worcester 8, Mass. This respondent, having one branch place of business, hold one additional membership in respondent National Association.

Mohawk Dental Supply Co., with its office and principal place of business at 258 Genesee Street, Utica 2, N. Y.

Harold S. Moore, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 90 State Street, Albany 1, N. Y. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

Mossey-Otto Co., a corporation, organized under the laws of the State of Wisconsin, with its office and principal place of business at 615 North Sixteenth Street, Milwaukee 1, Wis.

Nashville Dental Supply Co., a corporation, organized under the laws of the State of Tennessee, with its office and principal place of business at 160 Eighth Avenue, North, Nashville 2, Tenn.

Norton-Starr, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business in the State Tower Building, Syracuse 2, N. Y. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

M. F. Patterson Dental Supply Co. of Delaware, a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 970 Lowry Medical Arts Building, P. O. Box 225, St. Paul, Minn. This respondent was erroneously described in the complaint as M. F. Patterson Dental Supply Co., a Minnesota corporation. Said respondent, having 19 branch places of business, holds 19 additional memberships in respondent National Association.

Pattison-McGrath Co.—Dental Supplies, a corporation, organized under the laws of the State of Missouri, with its office and principal place of business at 1117 Walnut Street, Kansas City 13, Mo. This respondent was erroneously described in the complaint as Pattison-McGrath Co., a corporation.

Pearce Dental Supply Co., a corporation, organized under the laws of the State of Kansas, with its office and principal place of business as 212 North Market Street, Wichita 2, Kans. This respondent, having two branch places of business, holds two additional memberships in respondent National Association.

Pendleton & Arto, Inc., a corporation, organized under the laws of the State of Texas, with its office and principal place of business in the Medical Arts Building, Houston 1, Tex.

Pittsburgh Dental Depot, Inc., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 907 Penn Avenue, Pittsburgh, Pa.

Powers and Anderson Dental Co., Inc., a corporation, organized under the laws of the State of Virginia, with its office and principal place of business at 2 South Fifth Street, P. O. Box 712, Richmond 6, Va. This respondent, having four branch places of business, holds four additional memberships in respondent National Association.

Primrose-Johnson Dental Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 809 Temple Building, Rochester 4, N. Y.

R. & E. Dental Supply Co., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 307 Lenox Avenue, New York 27, N. Y.

S. H. Reynolds' Sons Co., a corporation, organized under the laws of the State of Massachusetts, with its office and principal place of business at 100 Boylston Street, Boston 16, Mass.

Rose Dental Depot, with its office and principal place of business at 505 Boyle Bulding, Little Rock, Ark.

Rovane Dental Supply Co., a corporation, organized under the laws of the State of Iowa, with its office and principal place of business at State Central Savings Bank Building, Keokuk, Iowa.

Edward H. Rowan Dental Supplies, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 880 Bergen Avenue, Jersey City, N. J.

Russell-Altenberg Co., a corporation, organized under the laws of the State of Maine, with its office and principal place of business at 15 Mellen Street, Portland 4, Maine.

Smith-Holden, Inc., a corporation, organized under the laws of the State of Rhode Island, with its office and principal place of business at 144 Westminster Street, Lauderdale Building, Providence 1, R. I. This respondent, having two branch places of business, holds two additional memberships in respondent National Association.

Thau-Nolde, Inc., a corporation, organized under the laws of the State of Missouri, with its office and principal place of business at 601–621 Frisco Building, St. Louis 1, Mo. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

Thompson Dental Co., a corporation, organized under the laws of the State of South Carolina, with its office and principal place of business at 1508 Washington Street, Columbia (A), S. C. This respondent, having three branch places of business, holds three additional memberships in respondent National Association.

C. M. Lowry and D. Z. Lowry, individually and as copartners, trading as Tri-State Dental Depot, having their office and principal place of business in the Guaranty Bank Building, Huntington 18, W. Va. These respondents, having one branch place of business, hold one additional membership in respondent National Association.

Tri-State Dental Supply Co., a corporation, organized under the laws of the State of Arizona, with its office and principal place of business at 500 Professional Building, Phoenix, Ariz. This respondent, having three branch places of business, holds three additional memberships in respondent National Association.

Margaret H. Van Kleeck, Ralph E. Van Kleeck, and Dudley N. Van Kleeck, individuals and co-partners, trading as B. D. Van Kleeck, with their office and principal place of business at 90 Market Street, Poughkeepsie, N. Y. These respondents were erroneously described in the complaint as B. D. Van Kleeck, a member dealer.

E. L. Washburn & Co., Inc., a corporation, organized under the laws of the State of Connecticut, with its office and prinicpal place of business at 71 Whitney Avenue, New Haven, Conn. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

Dental Equipment Specialists, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 500 Fifth Avenue, New York 18, N. Y. This respondent was erroneously described in the complaint as the Weber Dental Equipment Co., Inc., a corporation.

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John Welch Dental Depot, Inc., a corporation, organized under the laws of the State of Oregon, with its office and principal place of business in the Morgan Building, Portland, Oreg.

Western Dental Supply Co., a corporation, organized under the laws of the State of Utah, with its office and principal place of business at 506–507 Judge Building, Salt Lake City 14, Utah.

White-Rafert Co., a corporation, organized under the laws of the State of Indiana, with its office and principal place of business at 114 South Sixth Street, Terre Haute, Ind.

Wright's, Inc., formerly trading as Wright Dental Supply Co., a corporation, organized under the laws of the State of Wisconsin, with its office and principal place of business in Milwaukee, Wis., mailing address P. O. Box 725. This respondent, having one branch place of business, holds one additional membership in respondent National Association.

(*b*) The following respondents are member manufacturers of respondent National Association:

The American Cabinet Co., with its office and principal place of business at Two Rivers, Wis.

The American Platinum Works, a corporation, organized under the laws of the State of New Jersey, with its office and principal place of business at New Jersey Railroad Avenue at Oliver Street, Newark 5, N. J. A stipulation entered into by and between counsel for this respondent and counsel supporting the complaint discloses that for more than 10 years this respondent has not taken part in the affairs and activities of the respondent National Association, and that during this period it has paid only minimum dues to said association. The company's sales in dental goods amount to approximately one-third of 1 percent of its total yearly business. The trial examiner accordingly dismissed the complaint as to said respondent, to which action of the trial examiner no exception was taken by counsel supporting the complaint.

American Sterilizer Co., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business in Erie, Pa.

The W. V-B Ames Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 137 North Adams Street, Fremont, Ohio.

Claudius Ash Sons & Co., U. S. A., Inc., with its office and principal place of business at 127–131 Coit Street, Irvington 11, N. J.

Harry J. Bosworth Co., a corporation, organized under the laws of the State of Illinois, with its office and principal place of business at 216 West Jackson Boulevard, Chicago, Ill.

Wilmot Castle Co., with its office and principal place of business at 1255 University Avenue, Rochester 7, N. Y.

H. M. Chandler Co., with its office and principal place of business at 108 West Forty-second Street, New York 18, N. Y.

Chayes Dental Instrument Corp., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 460 West Thirty-fourth Street, New York 1, N. Y.

The Cleveland Dental Manufacturing Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 3307 Scranton Road SW., Cleveland 1, Ohio.

The Columbus Dental Manufacturing Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 634 Wager Street, Columbus 6, Ohio.

P. N. Condit, with its office and principal place of business at Boston 17, Mass.

Cook-Waite Laboratories, Inc., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 1450 Broadway, New York, N. Y. This respondent has a subsidiary corporation, to wit: Cook-Waite Laboratories, Inc., located at Fort Erie North, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

Thomas J. Dee & Co., a corporation, organized under the laws of the State of Illinois, with its office and principal place of business at 1900 West Kinzie Street, Chicago 22, Ill.

Densco, Inc., formerly trading as the Dental Specialty Manufacturing Co., a corporation, organized under the laws of the State of Colorado, with its office and principal place of business in Denver, Colo., mailing address P. O. Box 420.

The William Getz Corp., a corporation, with its office and principal place of business at 7512 Greenwood Avenue, Chicago 19, Ill. This respondent is the successor to, and was erroneously described in the complaint as, Dental Products Co., a corporation.

J. C. & A. L. Fawcett, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 408 Jay Street, Brooklyn 1, N. Y.

General Electric X-Ray Corp., prior to its resignation on April 30, 1948, with its place of business at 4855 Electric Avenue, Mil-

waukee 14, Wis., is a subsidiary of and wholly owned by the General Electric Co., the parent company being a corporation organized and existing under the laws of the State of New York, with its principal executive offices located at One River Road, Schenectady, N. Y. This respondent resigned from the respondent National Association on April 30, 1948, and has not been a member of said association since that date.

General Refineries, Inc., a corporation, organized under the laws of the State of Minnesota, with its office and principal place of business at 27 North Fourth Street, Minneapolis 1, Minn.

Gomco Surgical Manufacturing Corp., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 828 East Ferry Street, Buffalo 11, N. Y.

The Hygienic Dental Rubber Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at 31 West Market Street, Akron 8, Ohio.

The estate of J. W. Ivory, Chester S. Ivory, surviving trustee trading as J. W. Ivory, having its office and principal place of business at 310–312 North Sixteenth Street, Philadelphia 2, Pa. This respondent was erroneously described in the complaint as Hattie A. Ivory and Chester Scott Ivory, individually and as copartners, trading as J. W. Ivory. The record discloses that Hattie A. Ivory is deceased.

J. F. Jelenko & Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 136 West Fifty-second Street, New York 19, N. Y.

Johnson & Johnson, a corporation, organized under the laws of the State of New Jersey, with its office and principal place of business at New Brunswick, N. J.

H. D. Justi & Son, Inc., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at Thirty-second and Spring Garden Street, Philadelphia 4, Pa.

Kerr Manufacturing Co., a corporation, organized under the laws of the State of Michigan, with its office and principal place of business at 6081–6095 Twelfth Street, Detroit 8, Mich.

King's Specialty Co., a corporation, organized under the laws of the State of Indiana, with its office and principal place of business in Fort Wayne, Ind., mailing address, P. O. Box 240.

Martha F. McKesson, an individual trading as McKesson Appliance Co., with her office and principal place of business at 2226 Ashland Avenue, Toledo 10, Ohio. This respondent was erroneously described in the complaint as McKesson Appliance Company.

Hastings & Co., Inc., a corporation, with its office and principal place of business at 2314 Market Street, Philadelphia 3, Pa. This respondent was erroneously described in the complaint as John V. Hastings, Jr., and Henry B. Robb, Jr., individually and as copartners, trading as Morgan Hastings & Co.

The J. Bird Moyer Co., Inc., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 117–121 North Fifth Street, Philadelphia 6, Pa.

Mynol Chemical Co., Inc., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 5217 Whitby Avenue, Philadelphia 43, Pa.

The J. M. Ney Co., a corporation, organized under the laws of the State of Connecticut, with its office and principal place of business at 71 Elm Street, Hartford 1, Conn.

Novocol Chemical Manufacturing Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 2921–2923 Atlantic Avenue, Brooklyn 7, N. Y. This respondent has a subsidiary corporation, to wit: Novocol Chemical Manufacturing Co., of Canada, Ltd., located at 11–13 Greenville Street, Toronto, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

The Ohio Chemical & Manufacturing Co., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 1400 East Washington Avenue, Madison 3, Wis. This respondent resigned from the respondent National Association on October 12, 1948, and has not been a member of said association since that date.

The Pelton & Crane Co., a corporation, organized under the laws of the State of Michigan, with its office and principal place of business at 632–652 Harper Avenue, Detroit 2, Mich.

Geo. P. Pilling & Son Co., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 3451 Walnut Street, Philadelphia 4, Pa.

Puritan Compressed Gas Corp., a corporation, organized under the laws of the State of Missouri, with its office and principal place of business at 2012 Grand Avenue, Kansas City 8, Mo.

Rinn X-Ray Products, Inc., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at 3039 Fullerton Avenue, Chicago 47, Ill.

Ritter Co., Inc., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at Ritter Park, Rochester, N. Y., mailing address, P. O. Box 848.

The Silv-O-Dent Co., with its office and principal place of business at 1708 Northeast Alberta Street, Portland 11, Oreg.

William N. Force, an individual trading as E. E. Smith, having his office and principal place of business at 1232 Race Street, Philadelphia 7, Pa.

Lee S. Smith & Son Manufacturing Co., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 7325 Pennsylvania Avenue, Pittsburgh 8, Pa.

Spyco Smelting & Refining Co., a corporation, organized under the laws of the State of Minnesota, with its office and principal place of business at 51 South Third Street, Minneapolis 1, Minn.

Vernon-Benshoff & Co., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business in Pittsburgh, Pa., mailing address P. O. Box 1587.

The Weber Dental Manufacturing Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at Crystal Park, Canton 5, Ohio.

H. B. Wiggin's Sons Co., with its office and principal place of business at Arch Street, Bloomfield, N. J.

Williams Gold Refining Co., Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business at 2978 Main Street, Buffalo 14, N. Y. This respondent has a subsidiary corporation, to wit: The Williams Gold Refining Co. of Canada, Ltd., located in Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

Young Dental Manufacturing Co., a corporation, organized under the laws of the State of Missouri, with its office and principal place of business at 4958–4960 Suburban R. W., St. Louis 8, Mo.

(*c*) The following respondents are both member dealers and member manufacturers of respondent National Association:

Buffalo Dental Manufacturing Co., a corporation, organized under the laws of the State of New York, with its dealer office at 775 Main Street, Buffalo 2, N. Y., and its manufacturing office at 145 Kehr Street, Buffalo 11, N. Y.

The L. D. Caulk Co., a corporation, organized under the laws of the State of Delaware, with its office and principal place of business at Milford, Del. This respondent, having 11 branch places of business, holds 11 additional memberships in respondent National Associa-

tion. Said respondent has a subsidiary corporation, to wit: The L. D. Caulk Co. of Canada, Ltd., located in the Caulk Building, 178 John Street, Toronto, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of the respondent National Association.

The Dentists' Supply Co. of New York, a corporation, organized under the laws of the State of New York, with its office and principal place of business at 220 West forty-second Street, New York 18, N. Y.

Goldsmith Bros. Co., also known as Goldsmith Bros. Smelting & Refining Co., a corporation, organized under the laws of the State of Illinois, with its office and principal place of business at 109 North Wabash Avenue, Chicago, Ill. This respondent has a subsidiary corporation, to wit: Goldsmith Bros. Smelting & Refining Co., Ltd., located in Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association. Said subsidiary also wholly owns another member of the Canadian Dental Trade Association, to wit: The Dominion Dental Co., Ltd., located in Toronto, Ontario, Canada.

The Ransom & Randolph Co., a corporation, organized under the laws of the State of Ohio, with its office and principal place of business at Toledo, Ohio, mailing address P. O. Box 905. This respondent, having 13 branch places of business, holds 13 additional memberships in respondent National Association.

The S. S. White Dental Manufacturing Co., a corporation, organized under the laws of the State of Pennsylvania, with its office and principal place of business at 211 South Twelfth Street, Philadelphia 5, Pa. This respondent, having 17 branch places of business, holds 17 additional memberships in respondent National Association. Said respondent has a subsidiary corporation, to wit: S. S. White Co. of Canada, Limited, located at 250 College Street, Toronto, Ontario, Canada, and maintains a membership in the Canadian Dental Trade Association, a constituent and component part of respondent National Association.

The respondents named and described in this paragraph constitute the entire membership of said respondent National Association, except for two member dealers in the Territory of Hawaii and seven member dealers in Canada, and except for the respondents General Electric X-Ray Corp. and the Ohio Chemical & Manufacturing Co., who resigned from respondent National Association prior to the issuance of the complaint herein.

PAR. 5. The respondent National Association is not engaged in the business of manufacturing, purchasing, selling, or distributing dental

goods, as herein described, but said respondent has aided, abetted, guided, and assisted the respondent member manufacturers and member dealers in the unlawful acts and practices herein found.

PAR. 6. The respondent member manufacturers and member dealers are now, and for more than 10 years last past they have been, engaged in the manufacture and in the purchase, sale and distribution of dental goods. Said respondents cause their products, when sold, to be shipped to the purchasers thereof in the several States of the United States other than in the States of origin of said shipments, and for more than 10 years last past they have carried on a constant course of trade in said dental goods in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. Prior to the unlawful agreement, combination and conspiracy herein found to exist, the respondent member manufacturers and member dealers were in competition with one another in manufacturing, purchasing, selling, and distributing dental goods in commerce within the intent and meaning of the Federal Trade Commission Act, and said respondents were and are now in competition with others engaged in the same business.

PAR. 8. The respondent member manufacturers and member dealers sell and distribute in excess of 75 percent of the volume of dental goods manufactured, sold, and distributed in the United States, and by reason of this fact said respondents possess the ability and means of dominating and controlling the dental goods industry in the United States.

PAR. 9. For more than 10 years last past, respondent member manufactures and member dealers, respondent National Association and its respondent officers, the component dealers' clubs or associations, and the manufacturers' groups have been engaged in and have since carried on an unlawful agreement, combination, understanding, and conspiracy to hinder, lessen, eliminate, limit, and restrain competition in prices and otherwise between and among respondent member manufacturers and member dealers in the manufacture and in the purchase, sale and distribution of dental goods in commerce among and between the various States of the United States and in the District of Columbia, and to monopolize in respondent member manufacturers and dealers the manufacture and the purchase, sale, and distribution of said products in said commerce. Pursuant to and in furtherance of the aforesaid understanding, agreement, combination, and conspiracy, and as the result of a planned common course of action, the respondent member manufacturers and member dealers, through and with the aid, assistance, and guidance of respondent National Asso-

ciation and its respondent officers and dealers' clubs or associations, have done and performed, among others, the following acts and practices:

(*a*) Classified dental goods and agreed upon exact retail prices at which the various classifications of dental goods should be sold to both dealers and the ultimate consumers.

(*b*) Agreed upon uniform rates of discount at which dealers could purchase dental goods from manufacturers.

(*c*) Agreed upon uniform terms of credit at which dental goods should be sold to dentists and other consumers.

(*d*) Agreed upon and fixed uniform terms and prices to be allowed for used dental equipment when taken in exchange for new equipment and agreed upon uniform prices to be charged for and uniform terms of sale for such used equipment.

(*e*) Agreed to disseminate, and disseminated, among themselves and by and through respondent National Association at frequent intervals current and future quotations of prices, terms and conditions of sale offered to the trade by various respondent member manufacturers and member dealers.

(*f*) Held meetings at which prices, terms, and conditions of sale and trade practices and policies designed to eliminate competition in price and otherwise among and between the respondents were discussed and acted upon.

(*g*) Agreed upon a division of territory among the various respondent member dealers in such manner as to result in a minimum of competition among said member dealers.

(*h*) Established a system of policing the industry whereby deviations from pricing and selling policies and practices were reported to appropriate officers and committees of said respondent National Association, and to the sectional dealers' clubs, all of whom thereafter by various and sundry methods have brought pressure to bear upon the alleged violator, with the result that the agreed upon pricing and selling policies and practices have been adhered to.

(*i*) Agreed to and have caused all dealers in dental goods to sell the products of respondent member manufacturers at prices fixed and prescribed by said member manufacturers.

(*j*) Prevented independent dealers from obtaining merchandise for resale by such practices as buying the entire output of manufacturers engaged in selling to independent dealers, buying from manufacturers upon the understanding that such manufacturers would sell to member dealers only, and charging independent dealers consumer prices.

(*k*) Agreed to and have caused member dealers to buy only from member manufacturers.

(*l*) Agreed to and have caused member manufacturers to sell only to member dealers.

(*m*) Agreed to and have caused respondent member manufacturers and member dealers not to sell respondent member manufacturers' products to jobbers or to those with whom trade relations have not been established by respondent manufacturers, thereby preventing independent dealers from obtaining the products of respondent manufacturers.

(*n*) Agreed to and have systematically disparaged independent manufacturers and dealers and the dental products manufactured, sold, and distributed by independent manufacturers and dealers. Respondents characterize independent manufacturers and dealers as "gripsackers," "carpetbaggers," "illegitimate manufacturers," "illegitimate dealers," "price-cutters," "unauthorized," "unrecognized," "unreliable" and other derogatory names, as contrasted to member manufacturers and dealers who are characterized as "legitimate," "authorized," "recognized," or "reliable" manufacturers or dealers. Respondents characterize the products of independent manufacturers and dealers as "illegitimate," "substandard goods," "off-brand merchandise," "cheap quality merchandise," "monkey brands," and similar names, as contrasted to the products of member manufacturers and dealers, which are characterized as "authorized," "legitimate," "quality merchandise," or "standard products."

PAR. 10. Consideration has been given to the stipulations with reference to the respondents General Electric X-Ray Corp. and the Ohio Chemical & Manufacturing Co., and while it is found that the General Electric X-Ray Corp. resigned its membership from the respondent National Association on April 30, 1948, and the Ohio Chemical & Manufacturing Co. resigned on October 12, 1948, there is nothing in the record to show that they have continued or discontinued the acts and practices in which they admitted in their answers they were engaged.

PAR. 11. The capacity, tendency, and effect of the understanding, agreement, combination, and conspiracy in which it is found that the respondents have entered into and the acts and practices the respondents have done and performed and are now doing and performing in furtherance thereof and pursuant thereto are now and have been to substantially lessen, restrain, and suppress competition among and between said respondent member manufacturers and between member dealers in the manufacture and in the sale and distribution of dental

goods in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act; have a dangerous tendency to and have and do now actually hinder, restrict, and prevent competition in price and otherwise between and among said respondents in the manufacture and in the sale and distribution of said products in said commerce; have empowered and enabled the respondents to control the market and enhance the prices paid by purchasers of said products; and have a dangerous tendency to create a monopoly in said respondents in the manufacture and in the sale and distribution of said products in interstate commerce.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of competitors of the respondent manufacturers and dealers and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, substitute answers thereto filed by all of the respondents, in which answers said respondents (except the American Platinum Works, Milton Goolsby and Wilmoth C. Mack) admitted all of the material allegations of fact set forth in the complaint, waived all hearings as to said facts, and consented that the Commission, without any further intervening procedure, may make and enter its findings as to the facts, including inferences which it may draw therefrom, and its conclusion based thereon, and may issue and serve upon said respondents an order to cease and desist from any act or practice or method of competition alleged in the complaint to constitute a violation of section 5 of the Federal Trade Commission Act, certain stipulations of facts entered into by and between counsel for the American Platinum Works, Milton Goolsby and Wilmoth C. Mack and counsel supporting the complaint, the trial examiner's recommended decision and written memoranda and oral argument of counsel as to the form of order to be issued; and the Commission, having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, American Dental Trade Association a voluntary unincorporated association; Perry L. Blackshear, individually and as its president and a member of its executive board;

Howell Evans, individually and as its first vice president and a member of its executive board; William O. Patterson, individually and as its second vice president and a member of its executive board; Fred Steen, individually and as its treasurer and a member of its executive board; Clayton W. Conklin, individually and as a member of its executive board; Robert Kerr, Jr., individually and as its chairman, manufacturers' section and a member of its executive board; L. M. Anderson Dental Supply Co., a corporation; Perry L. Blackshear and G. Milton Goolsby, individually and as copartners, trading as Atlanta Dental Supply Co.; E. Benton Taylor, individually and trading as Luther B. Benton Co.; Lewis B. Bignall and Aurta Belle Bignall, individually and as copartners, trading as Bignall Dental Supply, formerly known as L. B. Bignall Dental Supplies; Bridges Dental Supply Co., a corporation; The Briggs-Kessler Co., a corporation; The Burkhart Dental Supply Co., a corporation; California Dental Supply Co., a corporation; the A. P. Cary Co., a corporation; H. J. Caulkins & Co., a corporation; the Chicago Dental Manufacturing Co., a corporation; Climax Dental Supply Co., a corporation; J. J. Crimmings Co., a member dealer; T. M. Crutcher Dental Depot, Inc. (Kentucky), a corporation; T. M. Crutcher Dental Depot, Inc. (Indiana), a corporation; Crutcher Dental Supply Co., a corporation; Dakota Dental Supply Co., a corporation; Davidson Dental Supply Co., Inc., a corporation; the Davis-Schultz Co., Inc., a corporation; the Deeley Dental Supply Co., also known as Deeley Dental Supply, a corporation; Dental Service Co., Inc., a corporation; the Dental Specialty Co., a corporation; Dentists & Surgeons Supply Co., Inc., a corporation; Dixie Dental Supply Co., a member dealer; Margaret Williams and James H. Williams, trading as Easton Dental Supply House, in the capacity of trustees of the estate of Nathan B. Williams; Eckley Dental Supply Co., Inc., a corporation; Edwards Dental Supply Co., a corporation; Ferguson Dental Supply Co., a member dealer; Fort Wayne Dental Depot, a corporation; Frink Dental Supply Co., a corporation; Geo. C. Frye Co., a corporation; Gates Dental Co., Inc., a corporation; General Dental Supply Co., Inc., a corporation; Goetze-Niemer Physician & Dental Supply Co., a corporation; Guterman Dental Supply Co., a corporation; the Hamilton Dental Supply Co., a corporation; the Harmeyer & Brand Co., a corporation; Harris Dental Co., Inc., a corporation; the H. L. Hayden Co., a corporation; Hebard Dental Supply Co., a corporation; Hill Dental Co., Inc., a corporation; John Hood Co., a corporation; Noche Cacciatore and Carl Cacciatore, individually and as copartners, trading as Iowa Dental Supply Co.; M. N. Jacobs Dental Supply Co., a corporation; Johnson & Lund Co., Inc.,

a corporation; Johnson-Stipher, Inc., a corporation; Mary C. Stites, individually and trading as Kalamazoo Dental Supply Co.; Kays-Durgin, Inc., a corporation; Keener Dental Supply Co., a member dealer; Oscar D. Leventhal and Joseph S. Leventhal, individually and as copartners, trading as A. Leventhal & Sons; the W. A. Lockwood Dental Co., Inc., a corporation; Long Island Dental Depot, a corporation; Los Angeles Dental Supply Co., a corporation; W. E. Lowry and Mary H. Lowry, individually and as copartners, trading as Lowry Dental Supplies; Mabee-Kanenbley, Inc., a corporation; Medcalf & Thomas, a corporation; Melrose Dental Depot, Inc., a corporation; E. L. Mercer, Inc., a member dealer; Midvale Dental Supply Co., a corporation; E. R. Mitchell Dental Depot, a corporation; Mohawk Dental Supply Co., a member dealer; Harold S. Moore, Inc., a corporation; Mossey-Otto Co., a corporation; Nashville Dental Supply Co., a corporation; Norton-Starr, Inc., a corporation; M. F. Patterson Dental Supply Co. of Delaware, a corporation; Pattison-McGrath Co.—Dental Supplies, a corporation; Pearce Dental Supply Co., a corporation; Pendleton & Arto, Inc., a corporation; Pittsburgh Dental Depot, Inc., a corporation; Powers and Anderson Dental Co., Inc., a corporation; Primrose-Johnson Dental Co., Inc., a corporation; R. & E. Dental Supply Co., a corporation; S. H. Reynolds' Sons Co., a corporation; Rose Dental Depot, a member dealer; Rovane Dental Supply Co., a corporation; Edward H. Rowan Dental Supplies, Inc., a corporation; Russell-Altenberg Co., a corporation; Smith-Holden, Inc., a corporation; Thau-Nolde, Inc., a corporation; Thompson Dental Co., a corporation; C. M. Lowry and D. Z. Lowry, individually and as copartners trading as Tri-State Dental Depot, a corporation; Tri-State Dental Supply Co., a corporation; Margaret H. Van Kleeck, Ralph E. Van Kleeck, and Dudley N. Van Kleeck, individually and as copartners, trading as B. D. Van Kleeck; E. L. Washburn & Co., Inc., a corporation; Dental Equipment Specialists, Inc., a corporation; John Welch Dental Depot, Inc., a corporation; Western Dental Supply Co., a corporation; White-Rafert Co., a corporation; Wright's, Inc., formerly trading as Wright Dental Supply Co., a corporation; the American Cabinet Co., a member manufacturer; American Sterilizer Co., a corporation; The W. V-B. Ames Co., a corporation; Claudius Ash Sons & Co., U. S. A., Inc., a member manufacturer; Harry J. Bosworth Co., a corporation; Wilmot Castle Co., a member Manufacturer; H. M. Chandler Co., a member manufacturer; Chayes Dental Instrument Corp., a corporation; the Cleveland Dental Manufacturing Co., a corporation; the Columbus Dental Manufacturing Co., a corporation; P. N. Condit, a member manufacturer; Cook-Waite Labora-

tories, Inc., a corporation; Thomas J. Dee & Co., a corporation; Densco, Inc., formerly trading as the Dental Specialty Manufacturing Co., a corporation; the William Getz Corp., a corporation; J. C. & A. L. Fawcett, Inc., a corporation; General Electric X-Ray Corp., a member manufacturer; General Refineries, Inc., a corporation; Gomco Surgical Manufacturing Corp., a corporation; the Hygienic Dental Rubber Co., a corporation; estate of J. W. Ivory, Chester S. Ivory, surviving trustee trading as J. W. Ivory; J. F. Jelenko & Co., Inc., a corporation; Johnson & Johnson, a corporation; H. D. Justi & Son, Inc., a corporation; Kerr Manufacturing Co., a corporation; King's Specialty Co., a corporation; Martha F. McKesson, individually and trading as McKesson Appliance Co.; Hastings & Co., Inc., a corporation; the J. Bird Moyer Co., Inc., a corporation; Mynol Chemical Co., Inc., a corporation; the J. M. Ney Co., a corporation; Novocol Chemical Manufacturing Co., Inc., a corporation; the Ohio Chemical & Manufacturing Co., a corporation; the Pelton & Crane Co., a corporation; Geo. P. Pilling & Son Co., a corporation; Puritan Compressed Gas Corp., a corporation; Rinn X-Ray Products, Inc., a corporation; Ritter Co., Inc., a corporation; the Silv-O-Dent Co., a member manufacturer, William N. Force, individually and trading as E. E. Smith; Lee S. Smith & Son Manufacturing Co., a corporation; Spyco Smelting & Refining Co., a corporation; Vernon-Benshoff & Co., a corporation; the Weber Dental Manufacturing Co., a corporation; H. B. Wiggin's Sons Co., a member manufacturer; Williams Gold Refining Co., Inc., a corporation; Young Dental Manufacturing Co., a corporation; Buffalo Dental Manufacturing Co., a corporation; the L. D. Caulk Co., a corporation; the Dentists' Supply Co. of New York, a corporation; Goldsmith Bros. Co., also known as Goldsmith Bros. Smelting & Refining Co., a corporation; the Ranson & Randolph Co., a corporation; and the S. S. White Dental Manufacturing Co., a corporation, and said respective respondents' officers, agents, representatives, and employees, in or in connection with the manufacture, offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of dental goods (which term includes all instruments, appliances, alloys, cements, artificial teeth, drugs and compounds, chairs and office furniture, and all other articles or products employed in the practice of the dental profession), 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 or among 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, establishing, or maintaining prices, discounts, terms, or conditions of sale for any article or kind of dental goods, or adhering, or promising to adhere, to any prices, discounts, terms, or conditions of sale so fixed, established, or maintained.

(2) Classifying dental goods in connection with prices, mark-ups, additions to, or deductions from prices to be charged for articles or products falling within a particular classification.

(3) Fixing or establishing terms or prices to be allowed for any articles of used dental equipment when either purchased outright or taken in exchange for new equipment, or agreeing upon prices, discounts, terms, or conditions of resale for such articles of used dental equipment.

(4) Exchanging, relaying, or disseminating, directly or through the respondent American Dental Trade Association, or any other central agency, price quotations, terms, or conditions of sale or other information as to current or future prices, discounts, terms, or conditions of sale for new or used dental goods.

(5) Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent American Dental Trade Association or its sectional dealers' clubs, or any other medium or agency, for the purpose of discussing or with the effect of devising or establishing methods of fixing, establishing, or maintaining prices, discounts, terms, or conditions of sale, for new or used dental goods.

(6) Agreeing upon, designating, limiting, allocating, or prescribing the territory in which a manufacturer or dealer may sell its (his) dental goods.

(7) Hindering or preventing independent dealers from obtaining merchandise for resale by such practices as any seller or sellers buying the entire output of manufacturers engaged in selling to independent dealers, or buying from manufacturers upon the understanding that such manufacturers will sell to member dealers only, or charging independent dealers consumer prices, or causing respondent member manufacturers or dealers to refrain from selling respondent member manufacturers' products to jobbers or to those with whom trade relations have not been established by respondent manufacturers, or by any other similar acts or practices.

(8) Causing respondent member dealers to buy only from respondent member manufacturers, or respondent member manufacturers to sell only to respondent member dealers.

(9) Disparaging nonmember manufacturers or dealers, or disparaging the dental goods manufactured, sold, or distributed by nonmember manufacturers or dealers, by characterizing said manufacturers or dealers as "gripsackers," "carpetbaggers," "illegitimate manufacturers," "illegitimate dealers," "price-cutters," "unauthorized," "unrecognized," "unreliable," or other similar disparaging terms, or by characterizing the dental goods of said nonmember manufacturers or dealers as "illegitimate," "substandard goods, "off-brand merchandise," "cheap quality merchandise," "monkey brands" or other similar disparaging terms.

(10) Agreeing upon, formulating or putting into operation any other plan or practice substantially similar to those prohibited in this order, which has the purpose or the effect of fixing, establishing, or maintaining any prices, discounts, terms, or conditions of sale for dental goods, or which has the purpose or the effect of monopolizing in the respondents the manufacture or the purchase, sale, or distribution of dental goods.

It is further ordered, That nothing contained in this order shall be construed as prohibiting:

1. Any seller of dental goods from entering into agreements with any of its (his) customers to sell to any such customers dental goods at any price or on any terms and conditions of sale independently determined and offered by either such seller or buyer and independently accepted by either such seller or buyer in any bona fide transaction when such agreements are not for the purpose nor have the effect of restraining trade;

2. The establishment or maintenance of any lawful bona fide relationship between any principal and its (his) agent;

3. The establishment or maintenance of any lawful bona fide agreements, discussions, or other action solely between any corporate respondent and its directors, officers, and employees, or between the officers, directors, agents, or employees of any corporate respondent relating solely to the carrying on of that corporation's sole and separate business, or between any corporate respondent and any of its wholly owned subsidiaries;

4. Any respondent seller of dental goods from including in any of its (his) sales contracts with any of its (his) customers a provision for the marketing of its (his) dental goods exclusively through such customer within any particular territory specified in such sales contracts;

5. Any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act;

6. Any of the respondents from taking such action relating to its export sales as is permitted under the provisions of the Webb-Pomerene Act.

It is further ordered, For the reasons set forth in the findings as to the facts in this proceeding, that the complaint herein be, and the same hereby is, dismissed as to the American Platinum Works, a corporation, Milton Goolsby, as chairman, dealers' section and a member, executive board of respondent American Dental Trade Association, Wilmoth C. Mack, individually and as secretary of respondent American Dental Trade Association, and Hattie A. Ivory, individually and as one of the copartners trading as J. W. Ivory.

It is further ordered, That the respondents shall, within 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.

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