IN THE MATTER OF

UNITED PRESSED PRODUCTS COMPANY ET AL., TRADING AS CARRON MANUFACTURING COMPANY

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

Docket 5731. Complaint, Jan. 11, 1950—Decision, Oct. 24, 1950

Where a corporation and its three officers, engaged in the manufacture and interstate sale and distribution of crystal radio sets, among other things, to dealers and to the purchasing public—

(*a*) Represented in advertising folders, circulars, and other advertising media that their said sets had a reception range of from 25 to 50 miles through the statement "Guaranteed reception from 25 to 50 miles from any good broadcasting station, and in many cases longer distances can be pulled in provided you follow instructions as to aerial and ground on each set"; and

(*b*) Represented that in case the aerial used is longer than 50 feet, a "200 MMF (.002 MFD) condenser" placed between the aerial and aerial connection would improve the reception of the set by separating the broadcasts from various stations

The facts being that under ordinary and usual conditions their said sets would provide reception only for powerful local stations; and the use of a condenser as advocated by them would not improve the selectivity but, on the contrary, would decrease it in some cases;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements were true, and of causing it thereby to purchase substantial quantities of their said sets, and with tendency and capacity so to do:

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

Mr. Charles S. Cox for the Commission.
Mr. Simon Herr, of Chicago, Ill., for respondents.

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 United Pressed Products Co., a corporation, and Harry Raffles, Frank Raffles, and Julius Raffles, individually and as officers of said United Pressed Products Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Com-

mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United Pressed Products Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondents, Harry Raffles, Frank Raffles, and Julius Raffles are president, vice president, and secretary, respectively, of the corporate respondent, and as such officers dominate, direct, and control the policies of the corporate respondent. Respondents trade under the name Carron Manufacturing Co., 415 South Aberdeen Street, Chicago, Ill., and have an office and principal place of business at 415 South Aberdeen Street, Chicago, Ill. Respondents for more than 3 years last past have been engaged in the business of manufacturing and selling, among other things, crystal radio sets.

PAR. 2. In the course and conduct of their said business and trading as The Carron Manufacturing Co., respondents sell and distribute said crystal radio sets to dealers for resale and to buyers among the purchasing public. Respondents cause, and for more than 3 years last past have caused, their said products, when sold, to be transported from their place of business in Chicago, Ill., to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said product, in commerce, among and between various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of said crystal radio sets, respondents have made certain statements in advertising folders, circulars and other advertising media with respect to the performance of said crystal radio sets, typical of which are the following:

Guaranteed reception from 25 to 50 miles from any good broadcasting station, and in many cases longer distances can be pulled in provided you follow instructions as to aerial and ground on each set.

Attached to said sets is a direction card upon which is presented, among other things, the following:

* * * If aerial is longer than 50 feet in length, for maximum separation of stations, use 200 MMF (.0002 MFD) condenser between aerial and aerial connection on set. * * *

PAR. 4. Through the use of the foregoing statements, respondents represented that their said radio set has a reception range of from 25 to 50 miles and greater distances, and that in case the aerial used is longer than 50 feet a "200 MMF (.0002 MFD) condenser" placed

between the aerial and aerial connection will improve the reception of the set by separating the broadcasts from various stations.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. Under ordinary and usual conditions respondents' said radio set does not have a reception range of 25 to 50 miles and will provide reception only for powerful local stations. The use of a condenser as advocated by respondents will not improve the selectivity of the set but on the contrary decreases its selectivity in some cases.

PAR. 6. The use by respondents of the representations, hereinabove set forth has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and causes and has caused a substantial portion of the purchasing public, because of such mistaken belief to purchase substantial quantities of respondents' said crystal radio sets.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the injury and prejudice 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 January 11, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, United Pressed Products Co., a corporation, and respondents, Harry Raffles, Frank Raffles, and Julius Raffles, individually and as officers of such corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, the Commission, on March 10, 1950, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer; 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 based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent United Pressed Products Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondents Harry Raffles, Frank Raffles, and Julius Raffles are president, vice president, and secretary, respectively, of the corporate respondent, and as such officers dominate, direct, and control the policies of the corporate respondent. Respondents trade under the name Carron Manufacturing Co., 415 South Aberdeen Street, Chicago, Ill., and have an office and principal place of business at 415 South Aberdeen Street, Chicago, Ill. Respondents for more than 3 years last past have been engaged in the business of manufacturing and selling, among other things, crystal radio sets.

PAR. 2. In the course and conduct of their said business and trading as the Carron Manufacturing Co., respondents sell and distribute said crystal radio sets to dealers for resale and to buyers among the purchasing public. Respondents cause, and for more than 3 years last past have caused, their said products, when sold, to be transported from their place of business in Chicago, Ill., to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said product, in commerce, among and between various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of said crystal radio sets, respondents have made certain statements in advertising folders, circulars and other advertising media with respect to the performance of said crystal radio sets, typical of which are the following:

Guaranteed reception from 25 to 50 miles from any good broadcasting station, and in many cases longer distances can be pulled in provided you follow instructions as to aerial and ground on each set.

Attached to said sets is a direction card upon which is presented, among other things, the following:

* * * If aerial is longer than 50 feet in length, for maximum separation of stations, use 200 MMF (.0002 MFD) condenser between aerial and aerial connection on set. * * *

PAR. 4. Through the use of the foregoing statements, respondents have represented that their said radio set has a reception range of from 25 to 50 miles and greater distances, and that in case the aerial used is longer than 50 feet a "200 MMF (.0002 MFD) condenser"

placed between the aerial and aerial connection will improve the reception of the set by separating the broadcasts from various stations.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. Under ordinary and usual conditions respondents' crystal radio set does not have a reception range of 25 to 50 miles and will provide reception only for powerful local stations. The use of a condenser as advocated by respondents will not improve the selectivity of said sets but on the contrary decreases its selectivity in some cases.

PAR. 6. The use by respondents of the representations hereinabove set forth has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and causes and has caused a substantial portion of the purchasing public, because of such mistaken belief, to purchase substantial quantities of respondents' said crystal radio sets.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the injury and prejudice 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 and the answer of respondents, in which answer respondents admit all of the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent United Pressed Products Co., a corporation, and its officers, agents, representatives, and employees, and respondent Harry Raffles, Frank Raffles, and Julius Raffles, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' crystal radio receiving sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing that under ordinary and usual conditions respondents' radios have a receiving range of from 25 to 50 miles or greater distances, or otherwise representing that the ordinary and usual receiving range of such sets is in excess of their actual capacity to provide reception only for powerful, local broadcasting stations.

(2) Representing that respondents' radios will afford increased selectivity by use of a condenser.

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

JAMES H. CHRISTIE DOING BUSINESS AS UNITED SURVEYS

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

Docket 5730. Complaint, Jan. 5, 1950—Decision, Oct. 26, 1950

As respects a practice which may delude and defraud others, the fact that a particular victim is no longer, or never was, angry, does not and cannot excuse the continuance of such a practice.

Where an individual engaged in the interstate sale and distribution in combination offers of books, including the New Standard Encyclopedia, Funk & Wagnall's Dictionary, Children's Classics, New International Atlas, and Duo-Tone Classics, through personal solicitation by his agents who were compensated solely by a commission on each sale, and whom he supplied with descriptive folders, and stretchers showing the bindings of book sets—

(*a*) Represented through his said agents that his combination offer was an introductory one for advertising purposes, and was at a reduced price which was substantially lower than the usual and regular selling price, and constituted a special offer extended only to selected persons in the particular community;

The facts being that said offer constituted his regular and customary way of merchandising, was made at the regular price, and was open to any one able to pay for the books; and

(*b*) Falsely represented, through statements in his purchase contracts and through his agents, that certain books were given free or without cost as premiums or bonuses to the purchaser when the cost of the encyclopedia was fully paid;

When in fact any book or books so included in the purchase contract was paid for by the purchaser when he paid the combination offer price;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, whereby it was induced to purchase substantial quantities of his said books:

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.

In said proceeding the fact that various purchasers of respondent's books were satisfied with those purchased, the terms of the sale, or the sales talk preceding the sale, was immaterial, since, if the terms or conditions of sale were misrepresented were believed and purchases made thereon, the injury to the public and from the public standpoint had occurred, was present and would reoccur.

As respects other charges in the complaint, there was no evidence that respondent's offer was represented as for a limited time only, nor was there sub-

stantial evidence that respondent, through his agents or otherwise, represented that if the supplements published to keep the encyclopedia up-to-date were purchased, the encyclopedia itself would be given without additional charge and as a gratuity; it appearing, as respects some slight evidence that two prospective purchasers received the latter impression when respondent's agent first began his sales talk, the substantial evidence was that all concerned knew they were buying and paying for the encyclopedia as well as the supplements before the contract was signed.

As regards the charge in the complaint that respondent falsely represented through the use of the trade name "United Surveys" that he was engaged in the business of making surveys for various publications: while said name might reasonably so imply, there was no evidence that such implication was conveyed, the evidence, on the contrary, being practically unanimously that no such impression was received.

Before *Mr. Frank Hier*, trial examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Murphy & Bantz, of Spokane, Wash., 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 James H. Christie, individually and trading as United Surveys, hereinafter referred to as respondent, has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent James H. Christie is an individual trading and doing business as United Surveys with his office and principal place of business located at 913 First Avenue in the city of Spokane, Wash. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of books including among others the New Standard Encyclopedia, Funk & Wagnall's Dictionary, Duo-Tone Classics, and New International Atlas.

PAR. 2. In the course and conduct of his business respondent causes his books when sold to be transported from his place of business in the State of Washington to purchasers thereof at their various locations in other States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in his said books in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business, and for the purpose of promoting the sale of said books, respondent has made many

statements and representations to prospective purchasers of said books in advertising matter and by means of representations of his salesmen. Among and typical of such statements and representations are:

1. That respondent is engaged in making surveys for various purposes.

2. That respondent is not selling the encyclopedia but if the loose-leaf supplements published for the purpose of keeping the encyclopedia up to date are purchased, the encyclopedia will be given without additional charge and as a gratuity.

3. That certain books are given without cost to the purchaser when the cost of the supplements is fully paid for.

4. That the combination offer of the supplements and encyclopedia is an introductory offer for advertising purposes; is at a reduced price and substantially lower than the usual and regular selling price for the books and that this offer is a special offer for a limited time only.

5. That the combination is offered only to selected persons in each area.

PAR. 4. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondent was not and is not engaged in making surveys of any sort or nature, his business being solely that of selling books for profit. Respondent is actually engaged in selling the encyclopedia and the loose-leaf supplements and the price represented as being the price charged for the supplements includes the charge for the encyclopedia. Any book or books sent to a purchaser at the time of the completion of the payments on the contract of purchase are not given without cost but the cost thereof is included in the contract price. The combination offer at a certain price is not an introductory offer; is not for advertising purposes nor is it at a reduced or lower price but is the usual and regular price for which said combination is sold. The offer is not confined to selected persons in a particular area but is available to all persons who may desire to purchase, and there is no time limit involved in such offers.

PAR. 5. Respondent through the use of the trade name United Surveys represents and has represented that he is engaged in the business of making surveys for various purposes. Such representation is false, misleading and deceptive. In truth and in fact, said respondent makes no surveys of any kind or description, his business being that of selling books.

PAR. 6. The use by the respondent, directly and through his agents, of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the

mistaken and erroneous belief that such statements and representations are true. As the result thereof the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's books.

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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 26, 1950, the initial decision in the instant matter of Trial Examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION

By FRANK HIER, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 5, 1950, issued and subsequently served its complaint in this proceeding upon respondent James H. Christie, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by all counsel; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent James H. Christie is an individual trading and doing business as United Surveys with his office and place of business located at 913 First Avenue, in the city of Spokane, Wash.

Respondent is now, and since 1946 has been, engaged in the sale and distribution of books, including, among others, the New Standard Encyclopedia published by the Standard Education Society of 130 North Wells Street, Chicago, Ill., Funk & Wagnall's Dictionary, Encyclopedia of Cooking, Children's Classics, New International Atlas, and Duo-Tone Classics.

PAR. 2. In the course and conduct of his business, respondent causes his books, when sold, to be transported from his place of business in the State of Washington or, occasionally, from the binderies located in other States to purchasers thereof located in the Western States of the United States. Respondent maintains, and since 1946 has maintained, a substantial course of trade in his books in commerce between and among the various States of the United States.

PAR. 3. Respondent sells his books through personal solicitation and persuasion by agents or representatives hired by him to devote their full time to his interests, who are compensated solely by a commission on each sale. Respondent does no direct mail, radio or periodical advertising. His agents are supplied by him with descriptive folders of each book offered, together with stretcher showing the bindings in the case of book sets. Respondent sells his books in combination offers, the most usual of which comprises the ten volumes of the New Standard Encyclopedia, the 10-year supplements thereto and a book or books, such as the Funk & Wagnall's Dictionary or a cookbook. The standard price on this combination is $98.50, which may be paid in cash, in which case the agent's commission is $40, or on time in monthly installments, in which case the agent's commission is $36, when fully paid. Other combinations, not including the New Standard Encyclopedia or its supplements, are also offered and sold at various prices.

PAR. 4. In the course and conduct of his business, as hereinabove described, and for the purpose of promoting the sale of said books, respondent, through his agents, has made statements and representations to prospective purchasers that the combination offer of the encyclopedia and supplements is an introductory offer for advertising purposes; that such offer is at a reduced price which is substantially lower than the usual and regular selling price for the books; that the offer was a special one extended only to selected persons in the particular community.

PAR. 5. These representations were false, misleading and deceptive in that the combination offer of the New Standard Encyclopedia and its supplements is not an introductory offer for advertising purposes,

but is the regular and customary way of merchandising these publications and has been for a number of years; such offer is not at a reduced price, substantially lower than the usual and regular selling price, but is the usual and regular offer and price; such offer is not a special offer, nor is it made only to selected persons in a particular community but is open to anyone desirous of buying the books and able to pay for them. The only selection made by respondent's agents is on the basis of likelihood of sale and payment.

PAR. 6. There is no evidence of any representations made by respondent, either directly or through his agents, that respondent's offer was for a limited time only.

PAR. 7. Respondent has also, through representations and statements on his purchase contracts and through statements made by his agents, represented to prospective purchasers, to induce them to buy, that certain books are given free or without cost, as premiums or bonuses to the purchaser, when the cost of the encyclopedia is fully paid.

PAR. 8. This representation is false, deceptive and misleading. Any book or books included in the contract for the purchase of the encyclopedia and its supplements is paid for by the purchaser when he pays the combination offer price. The cost is included therein.

PAR. 9. There is no substantial evidence that respondent, through his agents or otherwise, represented that if the supplements published for the purpose of keeping the encyclopedia up to date were purchased, the encyclopedia itself would be given without additional charge and as a gratuity. There is some slight evidence that two prospective purchasers received this impression when respondent's agent first began his sales talk. Whatever impression of this nature was conveyed or received was shortly corrected, however, and there is no evidence that anyone purchased or contracted to purchase under such belief. The substantial evidence is that all knew they were buying and paying for the encyclopedia, as well as the supplements, before the contract was signed.

PAR. 10. There is no substantial evidence that respondent's agents represented they were making a survey of the community, educational or otherwise. The name "United Surveys," under which respondent does business, might reasonably so imply but there is no evidence that such implication was conveyed. On the contrary, the evidence is practically unanimous that no such impression was received.

PAR. 11. The use by respondent, directly and through his agents, of the false, misleading and deceptive statements and representations de-

scribed in paragraphs 4, 5, 6 and 7 hereof has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations are true, as a result whereof, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's books.

CONCLUSION

The fact that various purchasers of respondent's books were or are satisfied with the books purchased, the terms of the sale or the sales talk preceding it is immaterial. If the terms or conditions of sale were misrepresented, were believed and purchases made thereon, the injury to the public and from the public standpoint has occurred, is present and will reoccur. That a particular victim is no longer, or never was, angry does not and cannot excuse the continuance of a practice which may delude and defraud others.

The acts and practices of respondent, as hereinabove 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

It is ordered, That James H. Christie, his employees, representatives or agents, trading under the name United Surveys, or under any other name, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of books or other publications, of whatever nature, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's combination offer of the New Standard Encyclopedia and the supplements published for the purpose of keeping the encyclopedia current is an introductory or special offer for advertising purposes.

2. That such offer is at a reduced or special price, substantially lower than the usual or regular selling price, for the books and publications included therein.

3. That such offer is made only to selected persons in a particular community or area.

4. That any other books or publications are given without cost to the purchaser when the price of the offer has been fully paid.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent, James H. Christie, shall within 60 days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of October 26, 1950.]

Commissioner Springarn not participating.

IN THE MATTER OF

EUGENE D. PETREY TRADING AS REMBRANDT STUDIO AND GOLDCRAFT PORTRAIT STUDIO 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 5222. Complaint, Sept. 25, 1944—Decision, Nov. 9, 1950

Where an individual who was engaged as owner or substantial partner in the operation of two photograph studios in Washington—at one of which he photographed members of the public brought there chiefly through the sale of so-called "advertising" coupons by house-to-house salesmen (who were compensated by the dollar charged therefor), and at the other finished the photographs thus taken—and selling to the public plain or colored photographs thus made, or enlargements or reductions thereof; along with his wife and four others associated with him as partners—

(*a*) Falsely represented the photographs described in the coupons would be made for the sum of one dollar or two dollars set out therein, through assurances to such effect by the salesman and through statements on the coupon or certificate that it was good for one photograph, as there described, and the direction to pay the representative the total price of one dollar or, in the case of the two-dollar coupons, to pay him one dollar and pay the other to the studio;

The facts being that the real purpose of the sale of the coupons was to sell to the purchaser extra pictures at prices assuring the studio a satisfactory profit; they did not honor their obligations to take the pictures of such purchasers and deliver to them photographs of the size and kind described on the coupons, but subjected the purchaser to a sustained high-pressure talk at the studio to induce him to purchase additional photographs; made various excuses and unreasonably delayed the performance of their agreements and in some instances completely repudiated them, when customers insisted that only the one picture called for by the coupon was desired; and told the customers who failed to obtain the one photograph called for and requested refunds, that they must secure the same from the salesman who retained the money;

With the result that many purchasers were misled and deceived as to the actual character of their offer and were thereby induced to purchase their said products; and,

Where said individuals, engaged as above set forth—

(*b*) Represented through form letters to former customers that a miniature photograph would be made from a negative on file and given to the particular customer concerned "absolutely free";

The facts being that the miniatures were never given unless and until the recipient delivered to four other persons the "Portrait Gift Certificate" included in said form letters and therein referred to, and each of said persons had returned his certificate to their studio; and the awarding of such miniatures constituted simply compensation for services rendered in inducing other prospective purchasers to come to their place of business;

With effect of misleading and deceiving a substantial portion of the purchasing public into the purchase of their photographs, and with capacity and tendency so to do; whereby substantial trade and commerce was unfairly diverted to them from their competitors:

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

Before *Mr. Henry P. Alden*, trial examiner.

Mr. Morton Nesmith for the Commission.

Thomas C. Bradley & Son, of Washington, D. C., for Eugene D. Petrey, Dorothy T. Petrey, Nicola Brozilla and B. B. Bishop.

Mr. Louis J. Gordon and *Mr. Milton M. Fisher*, of Springfield, Mass., for Theodore Rosenberg.

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 Eugene D. Petrey, individually and a copartner trading as Rembrandt Studio and Goldcraft Portrait Studio; Dorothy T. Petrey, individually and as a copartner, trading as Rembrandt Studio and Goldcraft Portrait Studio; Theodore Rosenberg, also known as Ted Rose, individually and trading as Rembrandt Studio; Ben Scheffman, individually and trading as Rembrandt Studio; Nicola Brozilla, individually and trading as Rembrandt Studio, and B. B. Bishop, individually and trading as Rembrandt Studio; hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Eugene D. Petrey, for more than 5 years last past, as owner, or as a partner holding a substantial interest therein, has operated, directed and controlled, or has participated in the operation, direction and control of the place of business now, and since early in 1941, located at 708 13th Street NW., in the city of Washington, D. C., and known as Rembrandt Studio, and of the place of business located at 716 13th Street NW., Washington, D. C., known as Goldcraft Portrait Studio.

Respondent Dorothy T. Petrey, wife of individual respondent Eugene D. Petrey, for more than 5 years last past, has owned a substantial partnership interest in said Rembrandt Studio and in Goldcraft

Portrait Studio, and in such capacity she has assisted respondent Eugene D. Petrey actively in the operation, direction and control of said studios, including the hiring and discharging of salesmen and other office employees, the formation of statements and representations appearing in various coupons employed in the sale of photographs and in the general direction and control of said studios.

Respondents Theodore Rosenberg also known as Ted Rose, and Ben Scheffman, now located at 806 Donnally Street, Charleston, W. Va., during a substantial portion of the aforesaid 5 years last past, have participated as copartners in the operation of Rembrandt Studio and prior to such participation were employed by and identified with Rembrandt Studio in the capacity of sales agents for such business.

Respondent Nicola Brozilla, located at 708 13th Street NW., Washington, D. C., since about June 5, 1943, in the capacity of a copartner, has been the owner of a substantial interest in Rembrandt Studio and at all times since said date has exercised and maintained an active and responsible supervision over the operation and direction of the affairs of said studio.

Respondent B. B. Bishop, located at 223⅓ Capitol Street, Charlestown, W. Va., is the brother-in-law of respondent Eugene D. Petrey, and since about June 5, 1943, as copartner, has owned a substantial interest in the aforesaid Rembrandt Studio. Respondents Nicola Brozilla and B. B. Bishop since becoming interested in Rembrandt Studio as copartners have lent their assistance, advice and cooperation in conducting and continuing the business of said studio on the coupon plan herein alleged and described.

PAR. 2. Respondents, during the periods stated herein, have been engaged in the sale and distribution of photographs, tinted or colored enlargements or reductions of photographs, and of frames therefor, in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, said respondents cause and have caused their said products, when sold, to be transported from their place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products, in commerce, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 3. In the course and conduct of their said business, respondents have been and are now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise en-

gaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia, of photographs, tinted or colored enlargements or reductions of photographs, and of frames therefor.

PAR. 4. Respondents herein, in connection with the conduct of their said business, during the said period of more than five years last past, have entered into and carried out with each other various undertakings, sales plans and agreements involving the use of false, misleading and deceptive acts, methods and practices employed to induce the purchase of their said products, as more fully hereinafter alleged and shown.

PAR. 5. Said Rembrandt Studio now, and for the said period of more than five years last past, has been operated as a partnership engaged in the business of making photographs of members of the general public, enlarging or reducing, and tinting or coloring said photographs, and selling frames therefor. Goldcraft Portrait Studio, located at 716 13th Street, NW., and for the said period of more than five years last past has been owned, controlled and operated by respondents Eugene D. Petrey and Dorothy T. Petrey, operated first as a corporation under the name Goldcraft Portraits, Inc., and later, and at the present time, operated as a partnership composed of the said Eugene D. Petrey and the said Dorothy T. Petrey, trading under the name of Goldcraft Portrait Studio. At the aforesaid plant of Goldcraft Portrait Studio, there is and has been done the finishing work necessary in connection with the operation of some 10 or more studios in which respondents Eugene D. Petrey and Dorothy T. Petrey are interested, located respectively in the States of Michigan, North Carolina, Virginia, West Virginia, and the District of Columbia. All supplies used in the business of said studios, including those for Rembrandt Studio, are purchased from the said Euegene D. Petrey and Dorothy T. Petrey, who also share in the profits of each such studio. The books and financial records of Rembrandt Studio are kept in the office and under the direction of Eugene D. Petrey at 616 13th Street, NW., Washington, D. C., who pays all bills and the operating expenses of Rembrandt Studio, including bills for supplies, frames, film paper, stationery, and coupons and the salaries of employees. Said respondent Eugene D. Petrey, in connection with the operation of Rembrandt Studio, receives and files duplicate cards of all sales made by said Studio. Said Eugene D. Petrey and Dorothy T. Petrey have at all times assumed and exercised over-all supervision of sales agents and other employees of Rembrandt Studio and over sales methods and sales policies employed by said studio.

PAR. 6. With a view to effecting the sale of their said products, respondents rely almost wholly upon the circulation among prospective customers of so-called advertising coupon offers and gift certificates. Respondents' plan of operation is in substance as follows:

House-to-house salesmen or canvassers, equipped with appropriate credentials, coupons and certificates, and with attractive samples of black and white and tinted or colored photographic work represented as being typical of the work produced and sold by respondents, contact members of the purchasing public at their respective homes or places of business. Being impressed by the beauty and attractiveness of the samples shown, the customer agrees to purchase a similarly finished photograph. The purchase of this photograph is effected by the sale of a Rembrandt Studio coupon or certificate good for one such photograph, generally and prominently stated and described in said coupon as "One 7 x 10 Goldcraft Colored in Oil." Respondents' sales agents represent and have represented to the purchaser that said coupon will be honored upon presentation at Rembrandt Studio and that it will be good for the said "One 7 x 10 Goldcraft Colored in Oil" photograph. The price of this product to the customer is usually stated in the face of the coupon to be "$1.00 only," and the purchaser of the coupon is directed therein to "Pay representative $1.00 for this certificate," and in a further printed statement or direction appears on the coupon, namely, "No Balance At Studio." These representations in said coupons or certificates are confirmed orally by sales agents of respondents in taking orders for photographs. It is further and variously stated in the face of coupons that they have respective studio values of $3.50, $4.50, $5.00 and $7.50. In the coupon asserting a studio value of $7.50 for the Goldcraft picture specified therein, the purchaser is directed to pay $1.00 to the salesman and a balance of $1.00 at the studio. It is further provided in the printed matter on coupons that there is "only one offer to a person or family unless additional portraits are ordered."

Numerous alleged "free" certificates or cards stated to be good for one Goldcraft portrait each, are and have been distributed to servicemen by respondents.

Coupons calling for the payment of $1.00 only to respondents' sales representatives with no balance at the studio, stipulating for "One 7 x 10 Goldcraft Colored in Oil" with a "studio value of $3.50," and designated in red script across the top thereof as "Special Christmas Offer," likewise have been sold by respondents to members of the purchasing public.

Respondents have further issued and disseminated in commerce "invitations" for a "free portrait," size 8 x 10, to be made by Goldcraft Portraits, Inc., now Goldcraft Portrait Studio.

Form letters are and have been distributed by respondents to customers by mail and otherwise offering "to make for you absolutely free, a beautiful miniature from your negative we have on file." Attached to each such form letter or circular are four "portrait gift certificates," each reciting that "the bearer of this certificate will receive one 7 x 10 graytone portrait" and that "this valuable certificate has been paid for by a friend." In the text of said circular appears the following:

These gift certificates are good indefinitely. However, we are anxious to have them used as soon as possible, and so, if you will see that all four certificates are redeemed within thirty days, we will give you absolutely free one beautiful miniature size photograph either from your negatives we have on file or from a new sitting.

In a postscript there is added:

Please remember, all you have to do to receive this lovely silk miniature is to urge your friends to come in within thirty days.

Another type of coupon employed by respondents in the operation of Rembrandt Studio calls, and has called, for "One 7 x 10 Goldcraft Colored in Oil" with a stated studio value of $3.50 and represented as being "given to you free by Thomas J. Herron."

Purchasers of coupons or certificates stated to be good for photographs at Rembrandt or other studio operated by respondents are given to understand in each instance that they are dealing with a duly constituted agent or sales representative of respondents, and believe and have been led to believe, and have relied upon the belief, that said agents and sales representatives have and have had full authority to make the representations employed by them in making sales of and collecting money for the said products of respondents.

Respondents' said sales agents, in their sales talks to customers, place and have placed particular emphasis upon the statement that "Goldcraft In Oil" pictures, worth respectively $3.50, $4.50 and $5.00 in "studio values," can be obtained for $1.00 each as a means of "advertising" respondents' products, and that the $7.50 portrait can be obtained for $2.00. Customers are and have been assured by respondents' said sales agents that all that is necessary for the customer to do in order to obtain the "Goldcraft In Oil," the silvertone (black and white), the "graytone" or other types of photographs sold by respondents by the use of coupons was and is to call at the studio with the coupon and to have a sitting there for the picture designated in the coupon.

Upon calling at the studio and presenting the coupon as directed, the customer soon learns the real purpose for which the coupon was sold him. Instead of proceeding to the making of the picture called for by the coupon, studio sales agents of respondents immediately launch upon a sustained, high-pressure sales talk to induce the customer to purchase additional photographs, attractive samples of same being shown and "special" prices offered in such connection. Various represenations are made to accomplish the sale of additional pictures.

The attitude and demeanor of respondents' studio representatives toward the customer is and has been determined by the fact as to whether the customer will agree to buy extra pictures. Upon learning that the customer only wants the one photograph called for by the coupon, the studio attitude changes from one of cordiality to one of undisguised disappointment and displeasure. The customer is thereupon informed on such occasions that in order to have the coupon honored it will be necessary to purchase additional pictures to be made for a "special" price. Various proposals are and have been made to customers. Typical of such proposals are the following: Extra pictures to cost $5.00 or $7.00; half a dozen extra pictures in brown for $17.50; extra pictures in black and white to cost $10.00; pictures of children for $8.00. Coupon holders are and have been further informed that the war has changed things and that the ordering of these extra pictures has become necessary. A new sitting is offered for a further payment where pictures are unsatisfactory, a substantial sum having already been charged for a first sitting. These and various other representations not herein set forth are and have been made by studio salesmen of respondents in support of the insistence that the customer must purchase extra pictures in order to have made the single picture called for by the coupon.

Upon being finally and definitely informed by the customer that he does not desire or intend to purchase additional pictures but wishes to have made only a single picture called for by the coupon held by him, the attitude of the respondents' salesmen undergoes a still further change. With all former pretense and conciliatory manner cast aside, respondents' said salesmen become rude and discourteous in manner and inform and have informed the customer variously that the coupon pictures will not be made because the proofs were not returned in time; because the proofs were not returned in person; because they are out of paper and for such reason cannot make the picture; that the studio has been taking wedding pictures for which special film was required; that thousands of orders are ahead of him and that the customer must wait until these orders are finished; that

the studio was too busy to take coupon pictures that day and that the customer must return later or sometime the following week. These and other excuses not herein set forth are typical of those made and being made by respondents' studio salesmen to justify their refusal to make a single or group picture called for by the coupon, where additional pictures were not ordered. Respondents on such occasions have not hesitated to repudiate and disavow representations, assurances and promises made by their sales agents to effect the sale of coupons, and have refused to return money collected from the customer.

Finally respondents, as a last resort, have frankly stated and admitted to coupon-holding customers that they cannot make the one picture called for in a coupon, either enlargement or miniature, without sustaining a studio loss thereon. Customers whose single coupon picture has been refused for alleged lack of time or press of accumulated studio work or other stated reason, are and have been given to understand that if they would order a few extra pictures, however, they could be "squeezed in" for a special sitting that day.

PAR. 7. Respondents' said original coupon offer and their various offers of alleged "free" pictures, as herein alleged and shown, are not and have never been bona fide offers to make a "7 x 10 Goldcraft" portrait or other photographic production "free" or for the sum of $1.00 or other sum paid a sales agent by the customer, but is and has been what is commonly known in the picture industry as a "come on" or "bait" offer only. Respondents pretend and have pretended to make, for the sum of $1.00, or to give away "free" one article, namely, a photograph, enlarged or reduced, plain or colored, when the real purpose of respondents in submitting their original offer was to sell the customer extra pictures at a price or prices insuring a satisfactory studio profit. Nearly all of respondents' said business is and has been obtained through the operation of this plan by the sale of coupons. The customer having cash tied up in a coupon, visits the studio of respondents where he is persuaded or high-pressured into buying other pictures. It is only from the sale of additional pictures that respondents realize a profit. The sum of $1.00, which is paid to coupon salesmen by the customer, or any other sum for which the salesman sees fit to sell a coupon, is retained by the salesman as his commission, respondents receiving no part of such sum under their sales plan. Having actually received nothing from the customer, so far as the studio is concerned, respondents cannot proceed to make a single coupon picture for the customer upon his arrival at the studio, for "advertising" purposes or otherwise, without suffering a loss.

In approaching customers respondents' said sales agents sell only the one picture called for by the coupon, and carefully refrain at such time from disclosing to the customer that their real purpose in submitting a coupon or "free" offer was and is to get the customer into respondents' studio where he may be induced to purchase later something he did not intend buying, or understand he was to buy, namely, extra pictures sold at a substantial profit.

In truth and in fact customers have not understood and respondents have carefully concealed from them that respondents did not intend honoring single coupon orders if it could be avoided; that the real purpose of respondents in submitting their coupon and "free" offers was not to advertise their products by making the one coupon or "free" picture promised, but to secure the presence of the customer at the studio where appropriate steps would be taken to obtain the purchase of additional pictures at a profit.

By the said practices and representations, as hereinbefore detailed and alleged, respondents led, and have induced, customers to believe that the original coupon or "free" picture offers are and were bona fide advertising "offers" not related to or connected with or conditioned upon any other offer or contractual arrangement; that the said pictures so offered would be made promptly and in good faith and that the studio values of $4.50, $5.00 and $7.00 represented for pictures in coupon and other advertising offers were the actual sales values or prices at which said pictures were ordinarily sold in the usual course of business; that pictures offered as a "Special Christmas Offer" or at alleged "Special" prices are actually "special" in point of time and price, and that said coupon or "free" pictures, when made, would be the equal in character, quality and workmanship of the samples employed to sell them, when such were not the facts. Single photographs unwillingly made by respondents, following controversy with a coupon holder refusing to purchase additional photographs, have been found frequently to be inferior in character and not the equal in finish, quality or merit of the samples exhibited in effecting the sale of the coupon.

Further, in truth and in fact the miniature offered by respondents in circulars disseminated by them is not "free" as the recipients of the circular is required to render distinct personal services in connection with four other customers before being entitled to receive said so-called "free" miniature, namely, to see that each of the four persons presents a "portrait gift certificate" at the studio within a period of thirty days, and the certificates alleged to have been "paid for by a friend" has not in fact been paid for by a friend or any other person, and the miniature

described as "silk" is not made or produced upon any base or background of silk material.

PAR. 8. The use by respondents of the aforesaid acts, practices and methods in connection with the offering for sale and sale of their said products in commerce, as aforesaid, and particularly the failure of respondents to reveal essential and important facts as to the real character of the offer made, has had and now has, the tendency and capacity to and does mislead and deceive the purchasing public regarding the actual character and purpose of the original offer made by respondents, including the identity of the actual product respondents were and are offering for sale, intend to sell, and are selling, concerning the quality, value and sales prices of their said enlargements or miniatures, and has led and does lead purchasers erroneously to believe that the said representations and implications, so made and used by respondents, are and were true, and causes and has caused a substantial number of the purchasing public, by reason of the erroneous beliefs so engendered, to purchase substantial quantities of said products.

The use by respondents of the aforesaid acts, practices and methods further has the tendency and capacity to, and does, unfairly divert trade to respondents from their competitors engaged in the sale of plain or colored photographs and enlargements or miniatures thereof, and frames therefor, in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products and do not make deceptive misrepresentations in connection with the sale thereof either by affirmative acts and statements or by the failure to disclose material facts and purposes to customers and to prospective customers. As a further consequence of the aforesaid acts and practices of respondents, the business of competitors has been injured by the unfair diversion of trade to the respondents and resulting loss of the confidence of a substantial portion of the public in the entire photographic industry.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competition in commerce and 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 September 25, 1944, issued and sub-

sequently served its complaint in this proceeding upon the respondents named in the caption hereof (except Ben Scheffman, who is deceased), charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of the respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint 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 aforesaid complaint, the respondents' answers thereto, the testimony and other evidence, the trial examiner's recommended decision and exceptions thereto, brief in support of the complaint (no brief having been filed on behalf of the respondents) and oral argument of counsel; and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and 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*) The respondent, Eugene D. Petrey, for more than 5 years last past, as owner, or as a partner holding a substantial interest in a business now located at 708 Thirteenth Street NW., in the city of Washington, District of Columbia, known as Rembrandt Studio, and in a business located at 716 Thirteenth Street NW., in the city of Washington, District of Columbia, known as Goldcraft Portrait Studio, has operated, directed and controlled, or has participated in the operation, direction and control of said businesses. Said Rembrandt Studio was formerly located at 1317 F Street NW., in the city of Washington, District of Columbia.

(*b*) The respondent, Dorothy T. Petrey, wife of Eugene D. Petrey, for more than 5 years prior to 1947 owned a substantial partnership interest in the said Rembrandt Studio and in Goldcraft Portrait Studio, and in such capacity she actively assisted the respondent, Eugene D. Petrey, in the operation, and in the direction and control, of said studios, particularly in the hiring and discharging of salesmen and other office employees, the formation of statements and representations appearing in various coupons employed in the sale of photographs, and the general direction and control of the studios.

(*c*) The respondent, Theodore Rosenberg, also known as Ted Rose, now located in Springfield, Mass., for a period of approximately 11 months preceding June 6, 1943, participated as a copartner in the operation of Rembrandt Studio, and prior to such participation was employed by the respondent, Eugene D. Petrey, in the studio business in Charleston, West Virginia. During the same period of time, Ben Scheffman, also named in the complaint as a respondent herein, but now deceased, was similarly connected with the business.

(*d*) The respondents, Nicola Brozilla and B. B. Bishop, on or about June 5, 1943, purchased the entire interests of the said Theodore Rosenberg and Ben Scheffman in the Rembrandt Studio, and these respondents are now, and since the above date they have been, copartners with the respondents, Eugene D. Petrey and Dorothy T. Petrey, in the operation of said Rembrandt Studio.

PAR. 2. The aforesaid respondents, during the periods of time and in the capacities indicated in the preceding paragraphs, have been, and the respondents, Eugene D. Petrey, Nicola Brozilla, and B. B. Bishop, are now, engaged in the sale and distribution of photographs, tinted or colored enlargements or reductions of photographs, and frames therefor. Said respondents cause and have caused their products, when sold, to be transported from the Rembrandt Studio in the District of Columbia to the purchasers of such products, some of whom are also located in the District of Columbia and others in other States of the United States, particularly in the States of Maryland and Virginia. The respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, the respondents have been and are now in direct and substantial competition with various corporations and with other partnerships and individuals likewise engaged in the sale and distribution in commerce of photographs, tinted and colored enlargements or reductions of photographs, and frames therefor.

PAR. 4. The principal business of the Rembrandt Studio is the taking of photographs of members of the public who call at the studio where they are photographed. After sitting for their pictures to be taken, the customers are shown proofs from which they make selections of their own choosing to be finished and delivered to them by the studio. The finishing work in connection with the photographs is done principally by the Goldcraft Portrait Studio. At all times mentioned herein, the business policies and practices of both Rem-

brandt Studio and Goldcraft Studio have been carefully supervised and controlled by the respondent, Eugene D. Petrey, who, prior to the early part of 1947, was assisted by the respondent, Dorothy T. Petrey.

PAR. 5. Approximately 75 to 80 percent of the business done by the respondents trading as Rembrandt Studio is derived from the sale of so-called "advertising" coupons, and offers of gift certificates or bonds. The respondents' plan of operation is in substance as follows:

House-to-house salesmen or canvassers equipped with appropriate credentials, coupons and certificates, and with attractive samples of photographic work represented as being typical of the work produced and sold by the respondents, contact members of the purchasing public at their respective homes and places of business. Being impressed by the beauty and attractiveness of the samples shown, a prospective customer may be and often is induced to purchase a similarly finished photograph. The transaction is effected by the sale to the customer of a Rembrandt Studio coupon or certificate good for one such photograph, generally described on the coupon as either "One 7 x 10 Goldcraft Colored in Oil," or "One 9 x 12 Goldcraft Colored in Oil," the sales agent representing to the purchaser that said coupon will be honored upon presentation at Rembrandt Studio and that it will be good for one photograph of the size and quality described thereon. The price of the photograph is printed on the face of the coupon, and the purchaser of the coupon is directed thereon either to pay the representative the total price of $1.00, or, where the total price to be paid is $2.00, to pay the representative one dollar and to pay the other dollar to the studio upon presentation of the coupon. In cases where the total price of the photograph is stated to be $1.00, the coupon also bears the statement "No Balance at Studio." Each of the coupons has printed on its face a "studio value" of the photograph being sold, which values are stated to be $3.50, $4.50, $5.00 or $7.50. It is further provided on the coupons, among other things, that there is "Only one offer to a person or family unless additional portraits are ordered" and that "This advertising offer obtained through representative only."

PAR. 6. The purchasers of coupons or certificates represented as being good for photographs at Rembrandt Studio are given to understand in each instance that they are dealing with a duly constituted agent or sales representative of said studio, and to believe that said agents and sales representatives have full authority to make the representations employed by them. The record shows that as a result

of representations made by such salesmen, and representations made on the coupons sold by them, many purchasers have been led to believe that the only thing necessary for them to do in order to obtain a Goldcraft portrait colored in oil, either 7 x 10 or 9 x 12 inches in size, is to call at the respondent's studio and have a sitting without an appointment.

PAR. 7. In truth and in fact, the coupons sold by the respondents do not constitute bona fide agreements on the part of the respondents to make the photographs described on such coupons, or any other photographs, for the amounts stated thereon. Such coupons are used as an inducement to get customers into the respondents' place of business where, it is expected, they will be sold other photographs at prices much higher than those stated on the coupons. The sum of one dollar which is paid to a salesman by a coupon purchaser is retained by the salesman as his commission, the respondents receiving no part of it, and it is only through the sale of photographs in addition to the one called for by a coupon that the respondents are able to realize any profit whatever from the transaction. The record is clear that the real purpose of the sale of the coupons is to sell to the purchasers thereof extra pictures at prices assuring the studio of a satisfactory profit.

A number of customers who have purchased the respondents' coupons appeared as witnesses in this proceeding and related their experiences following the purchase of such coupons. Instead of promptly and cheerfully proceeding to make the picture of such a customer upon his appearance at the studio, the respondents' employees would immediately launch upon a sustained, high-pressure sales talk to induce the customer to purchase additional photographs. When the customer stated that he or she wanted only the one picture called for by the coupon, various excuses were given by the representatives for not taking the picture or granting the sitting. In some instances, it was that the studio was rushed with business and that the coupon purchaser would have to come in at a later date. In other instances, it was that the respondents could not afford to take the picture at all unless additional photographs were ordered. In some cases, the coupon purchasers did not find out the real purpose of the coupon sale until they had received the proofs and returned them to the respondents' studio with their selection of the picture to be made; and in all cases it was evident to the coupon purchaser that the respondents definitely intended, if possible, to avoid the making of the one photograph called for by the coupon unless additional photographs were ordered. A number of the customers testified that after failing in their attempt to obtain the one photograph called for by their

coupons they requested refunds of the money which they had paid the salesmen, but were told that this money was retained by the salesmen and that they must get any refund from such salesmen.

PAR. 8. After having represented to members of the public that purchasers of their coupons may present such coupons at the respondents' place of business and obtain the photographs described thereon, the respondents clearly were under an obligation to take the pictures of such purchasers and deliver to them photographs of the size and kind described on the coupons. The record shows, however, that the respondents, on numerous occasions, have unreasonably delayed the performance of their agreements, and that in some instances, they have completely repudiated them. In concealing from prospective purchasers of their coupons the real purpose of the sale of such coupons, the respondents have taken unfair advantage of such prospective purchasers, and many of them have been misled and deceived regarding the actual character and purpose of the respondents' offers. As a result of such deception, substantial numbers of individuals have been induced to purchase and have purchased the respondents' products.

PAR. 9. In the course and conduct of their business, the respondents have also distributed to former customers, by mail and otherwise, form letters or circulars offering "to make for you absolutely free a beautiful miniature size photograph from your negative we have on file." Attached to each such form letter or circular were four "Portrait Gift Certificates," each reciting that "The bearer of this certificate will receive one 7 x 10 portrait" and that "This valuable certificate has been paid for by a friend." In the text of said form letter or circular has appeared the following:

> These gift certificates are good indefinitely. However, we are anxious to have them used as soon as possible, and so, if you will see that all four certificates are redeemed within 30 days, we will give you absolutely free one beautiful miniature size photograph either from your negatives we have on file or from a new sitting.

Through the use of such statements, the respondents have represented to the recipients of their form letters or circulars that the miniature photographs referred to in said letters or circulars would be given as a gift or gratuity to each of the recipients upon the presentation at the respondent's studio for the four certificates enclosed with the letter.

PAR. 10. In truth and in fact, the photographs referred to in these form letters or circulars were not intended by the respondents to be actual gifts and, contrary to the respondents' representations, they

were not given as a gratuity or without consideration. Such photographs were never given to a recipient of a letter unless and until such recipient delivered to four other persons the four portrait certificates enclosed with the letter, each of whom must have returned his certificate to the respondents' studio. It thus appears that the photographs awarded were simply compensation for services rendered by the recipients of the letters in inducing other prospective customers to come to the respondents' place of business.

PAR. 11. The use by the respondents of the aforesaid acts, practices and methods in connection with the sale of their photographs has had the capacity and tendency to, and has, misled and deceived a substantial portion of the purchasing public into the purchase of the respondents' photographs. As a result thereof, substantial trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, has been unfairly diverted to the respondents from their competitors.

CONCLUSION

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

Commissioner Mason not participating.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answers 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 exceptions thereto, brief in support of the complaint (no brief having been filed on behalf of the respondents) and oral argument of counsel, and the Commission having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Eugene D. Petrey, Dorothy T. Petrey, Theodore Rosenberg, Nicola Brozilla, and B. B. Bishop, individually and as copartners trading as Rembrandt Studio, or trading under any other name or trade designation, and said respective

respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of plain, tinted or colored photographs, or enlargements or reductions thereof, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any photograph will be made for a stipulated price, unless such a photograph will in fact be made for the stipulated price without the imposition or attempted imposition of any condition not clearly disclosed in the representation.

2. Representing, through the use of so-called advertising coupons, or by any other means, that a photograph of a designated kind and character will be made for a stipulated price unless such representation is made in good faith and failure to conform therewith is due to circumstances not reasonably under the respondents' control.

3. Using the word "free," or any other word or term expressly or implied importing a like meaning, in advertising, to designate, describe or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondents.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the respondent, Ben Scheffman, now deceased.

It is further ordered, That the respondents against whom this order is directed shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied therewith.

Commissioner Mason not participating.

Syllabus

IN THE MATTER OF

BONNER PACKING COMPANY ET AL.

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

Docket 5534. Complaint, Apr. 6, 1948—Decision, Nov. 9, 1950

Where a corporation and four officers thereof who, to a substantial degree, controlled its distribution and sales policies, engaged in the processing and packing, and interstate sale and distribution of apricots, figs, peaches, raisins, nectarines, and other dried fruits to many nationally known firms including packing companies, wholesale grocers, chain and independent grocery stores, through brokers known in the trade as "buying brokers" and who designated themselves as brokers, merchandise brokers, or primary distributors, but, unlike brokers, purchased in their own names, and for their own accounts—

(*a*) Deducted from the faces of the invoices of products shipped to such "buying brokers," in response to the latters' purchase orders, regular commissions or brokerage fees and collected from them the purchase price; and, for a short period of time subsequent to the enactment of the Robinson-Patman Act, continued their previous practice of selling their dried fruits in commerce directly to another large buyer and of deducting from the faces of the invoices on such sales regular commissions or brokerage fees; and

(*b*) For a substantial period of time subsequent to the passage of said act reduced the price of their products to a number of selected buyers under a special arrangement made by it with a brokerage company, whereby the commission or brokerage fee of said company was reduced from the regular 2½ percent commission to 1½ percent, and the savings reflected in the prices to such buyers; and in other sales to said selected buyers allowed them, instead of price reductions, other concessions in the form of absorption of cartage or consolidation charges incident to pool car shipments, which similarly reflected such savings:

Held, That such paying and granting of commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof, to buyers of said products on purchases for such buyers own account, constituted violations of subsec. (c) of sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

A broker of dried fruits as the term is used in the instant proceeding, is a sales agent who negotiates the sale of dried fruits for and on behalf of a principal seller, acting as his sales agent, soliciting and obtaining orders for the principal's dried fruit at the principal's prices and on the principal's terms, and ordinarily transmitting the orders received by him to his principal—who thereafter invoices and ships the fruits directly to the buyer—and is compensated by a commission or brokerage fee which is usually calculated as a certain percentage of the invoice sales price of the dried fruits sold. He is not a trader for profit, does not buy the fruits from his principal or sell them for his own account, and does not at any point in the transaction take title to or have any financial interest in the dried fruits sold by him,

except for his commission or brokerage fee, and neither makes a profit nor suffers a loss on any such transaction.

Mr. Edward S. Ragsdale for the Commission.

Mr. W. M. Miles, of Fresno, Calif., and *Covington, Burling, Rublee, O'Brian & Shorb*, of Washington, D. C., for respondents.

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 violated and are violating the provisions of subsection (c) 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), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Bonner Packing Co. is a corporation organized, existing, and doing business under the laws of the State of California, with its office and principal place of business located at 626 Blix Building, Fresno, Calif. The respondent also maintains a packing plant at Logan, Calif., and is engaged in the business of processing, packing, selling, and distributing apricots, figs, peaches, raisins, nectarines, and other fruits, all of which are hereinafter designated as dried fruits. The respondent sells its dried fruits to many nationally known firms, including baking companies, wholesale grocers, chain grocery stores, independent grocery stores and many other buyers located in various sections of the United States. The respondent generally enters into formal contracts with such buyers, such contracts requiring respondent to sell and deliver to such buyers its dried fruits at definite prices during a stated period of time.

PAR. 2. Respondent Charles W. Bonner is an individual residing in Fresno, Calif. He is now president of Bonner Packing Co. and has been a substantial stockholder and an officer of said corporation for a substantial period of time since June 19, 1936. After becoming an officer, and at the present time, and for some time past as president, respondent Bonner 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 Claire P. Hill is an individual residing in Fresno, Calif. He is now first vice president and sales manager of Bonner Packing Co. and has been a substantial stockholder and an officer of said corporation for a substantial period of time since June

19, 1936. After becoming an officer, and at the present time, and for some time past as first vice president and sales manager, respondent Hill 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 M. P. Davison is an individual residing in Fresno, Calif. He is second vice president of Bonner Packing Co. and has been a substantial stockholder and an officer of said corporation for a substantial period of time since June 19, 1936. After becoming an officer, and at the present time, and for some time past as second vice president, respondent Davison 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 Alfred U. Thomsen is an individual residing in Fresno, Calif. He is now secretary-treasurer of Bonner Packing Co. and has been a substantial stockholder and an officer of said corporation for a substantial period of time since June 19, 1936. After becoming an officer, and at the present time, and for some time past as secretary-treasurer, respondent Thomsen 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. Respondent corporation Bonner Packing Co., as aforesaid, is now and has been since prior to June 19, 1936, engaged in the business of processing, packing, sale and distribution of dried fruits, and said individual respondents, through said corporate respondent, have likewise been engaged in said business. Said respondents, in the course and conduct of their business, have sold and distributed, and now sell and distribute, their dried fruits to buyers located in the various States of the United States other than the State in which respondents are located, and as a result of said sales and the respondents' instructions such dried fruits are shipped and transported across State lines to such buyers so located. The corporate respondent and each of the individual respondents are hereinafter referred to as respondents.

PAR. 7. Respondents, through said respondent corporation, now sell and distribute, and since June 19, 1936, have sold and distributed, their dried fruits in commerce by three separate and distinct methods, namely:

(1) Through brokers who as respondents' sales agents make sales to buyers and are paid respondents' customary rate of commissions or brokerage for such services.

(2) Directly to favored buyers, without the intervention of brokers, at prices reflecting respondents' savings in commissions or brokerage fees.

(3) Through brokers to favored buyers on which sales the brokers do not receive the usual and customary commissions or brokerage but only a part or portion thereof, the other part of such commissions or brokerage being allowed to the favored buyers on such sales.

The three methods mentioned above are more fully described in paragraph 8.

PAR. 8. *First.* The first and principal method is by selling dried fruits to buyers through brokers of food products and for such services to respondents such brokers are compensated by being paid the customary commissions or brokerage fees. Such brokers are customarily paid 2½ percent of the purchase price of the dried fruits they sell for respondents.

A broker of dried fruits, as used herein, may be defined as a sales agent who negotiates the sale of such dried fruits for and on account of the respondents as principal. Such brokers act as respondents' sales agents, soliciting and obtaining orders for respondents' dried fruits at respondents' prices, on respondents' terms. Such brokers customarily transmit such purchase orders to the respondents, who thereafter invoice and ship the dried fruits to the buyer. The respondents pay such brokers for their services in negotiating and making such sales for the respondents' account commissions or brokerage fees which are customarily based on a percentage of the invoice sales prices of the dried fruits sold. Such brokers are not traders for profit, and do not take title to or have any financial interest in the dried fruits sold, except for their commissions or brokerage fees, and they neither make a profit nor suffer a loss on the transaction. A broker of dried fruits does not buy such products from his principal or sell such products for his own account. This phase or method of distributing and selling respondents' dried fruits is not challenged by this complaint.

Second: A second method which is challenged by this complaint, is respondents' sales of their dried fruits directly to buyers without the intervention of brokers, at prices reflecting respondents' savings in commissions or brokerage fees. Such buyers are of two distinct classifications, (1) large chain store organizations; and (2) "buying brokers." Representative of the large chain store organization which purchases dried fruits from respondents direct is:

American Stores Co., of Philadelphia, Pa. This buyer is a corporation engaged in the business of buying and selling food products, including groceries, bakery products, vegetables, dried and

canned fruits. This favored buyer has nine large warehouses and approximately two thousand retail stores located principally on the east coast in the States of Pennsylvania, New Jersey, Delaware, Maryland, New York, Virginia, and West Virginia. Its principal office is located in Philadelphia, Pa., where it purchases substantial quantities of dried fruits for its numerous retail units.

Respondents also sell substantial quantities of their dried fruits directly to buying brokers who generally designate themselves as brokers, merchandising brokers or primary distributors. These buyers are not in fact brokers but are generally known in the trade as buying brokers.

All such buyers referred to above, including the chain store organization and the buying brokers, transmit their own purchase orders for dried fruits directly to the respondents. The respondents thereafter invoice and ship such dried fruits directly to such buyers from whom respondents collect the purchase price of the merchandise. The respondents grant and allow such buyers, directly or indirectly, commissions or brokerage fees on such purchases. The rate of commissions or brokerage fees granted and allowed by respondents to such buyers is usually 2½ percent of the purchase price of the dried fruits purchased. Respondents grant and allow such buyers such commissions or brokerage frees directly or indirectly, usually by deducting or allowing from the invoice price of the dried fruits purchased an amount customarily designated as commissions or brokerage fees. Representative of the two distinct classifications of direct buyers to whom respondents have sold dried fruits in commerce since June 19, 1936, and to whom they have allowed, directly or indirectly, commissions or brokerage fees on such purchases are:

"Buying Brokers"
Foote Bros. & Co.,
Norfolk, Virginia.
Koehler-Spalding Co.,
Louisville, Kentucky.
Loeb Apte Co.,
Atlanta, Georgia.

Large Chain Store Organization
American Stores Company,
Philadelphia, Pennsylvania.

Third: The respondents' third method of sale, which is also challenged by this complaint, is their sales to certain favored buyers, including both a large wholesale organization, S & W Fine Foods, Inc., and a large chain store organization, namely, Safeway Stores, Inc., which favored buyers pay less to respondents for dried fruits than other buyers of similar commodities.

Respondents sell such favored buyers dried fruits at net prices, which prices reflect allowances for commissions and brokerage fees. The favored buyers also receive other financial benefits as a result of respondents' savings in brokerage fees.

Such favored buyers are sold through certain selected brokers to whom respondents pay less than they customarily pay their brokers, and such savings in commissions or brokerage fees as respondents effect in this manner are passed on directly or indirectly to respondents' favored customers in the form of lower prices, which prices reflect, directly or indirectly, the amount of commissions or brokerage fees retained by the respondents in such transactions. For example, George I. Taylor of 24 California Street, San Francisco, Calif., is one of respondents' selected brokers through whom respondents sell their dried fruits to both their "regular or run-of-the-mill buyers," and also to certain favored buyers, including S & W Fine Foods, Inc., and Safeway Stores, Inc. On sales to respondents' favored buyers respondents pay their broker only 1½ percent of the purchase price as commissions or brokerage fees for making such sales, while on sales made by the same broker to respondents' regular or run-of-the-mill buyers such broker is paid 2½ percent of the purchase price as commissions or brokerage fees.

The respondents' favored buyer, S & W Fine Foods, Inc., is a corporation engaged in the business of processing, buying, selling and distributing an extensive line of food products, including groceries, vegetables, dried and canned fruits, and bakery products. This favored buyer maintains many warehouses and sales offices, principally in Oakland, Los Angeles, and San Francisco, Calif.; Portland, Oreg.; Seattle, Wash.; Chicago, Ill., and New York, N. Y. Its principal office is located in San Francisco, Calif., where it purchases substantial quantities of food products for its numerous wholesale units.

The respondents' favored buyer, Safeway Stores, Inc., is a corporation engaged in the business of processing, buying and selling at wholesale and retail food products including groceries, vegetables, dried and canned fruits, and bakery products. This favored buyer has approximately twenty-five hundred retail stores which are located in various States of the United States, including Denver, Colo.; Pocatello, Idaho; Wichita, Kans.; Salt Lake City, Utah; Dallas, Tex.; Washington, D. C.; New York, N. Y., and Richmond, Va. Its principal office is located in Oakland, Calif., where it purchases substantial quantities of food products, including dried fruits, for its numerous retail units.

Respondents sell such favored buyers dried fruits at net prices, which prices reflect allowances for commissions and brokerage fees. The favored buyers, or some of the favored buyers, also receive on occasions other financial benefits as a result of respondents' savings in brokerage fees. Representative of such benefits are:

(1) Granting and allowing certain favored buyers the right to reduce or cancel its contracts to purchase respondents' dried fruits if respondents do not elect to meet lower prices;

(2) Respondents also absorb certain diversion and cartage charges incident to pool car shipments to certain favored buyers;

(3) Respondents sell their dried fruits to certain favored buyers at special confidential prices, which prices are lower than the prices at which respondents sell similar products to their "regular or run-of-the-mill buyers;"

(4) Respondents contract with certain favored buyers to sell dried fruits at a stated price for future delivery with the understanding that if the market declines respondents will either meet the decline or cancel the order;

(5) Respondents protect certain favored buyers on their orders for dried fruits at very low prices, and at the same time prevent such favored buyers from sustaining any loss by reason of market decline;

(6) Respondents allow certain favored buyers to profit of the market on dried fruits advances, but cancel the contract without loss to the favored buyers if the market declines.

PAR. 9. The respondents, since June 19, 1936, in connection with the sale of their dried fruits in commerce, as aforesaid, have been and are now paying or granting and have paid and granted directly or indirectly commissions, brokerage or other compensation or allowances and discounts in lieu thereof to buyers on their own purchases of respondents' dried fruits. Such buyers have, as aforesaid, purchased respondents' dried fruits in their own names and for their own respective accounts for resale.

PAR. 10. The acts and practices of each of the respondents herein, namely, Bonner Packing Co., a corporation, and Charles W. Bonner, Claire P. Hill, M. P. Davison, and Alfred U. Thomsen, individually and as officers of Bonner Packing Co., in promoting the sale of their dried fruits in commerce by paying, granting or allowing to buyers directly or indirectly commissions, brokerage or other compensation or allowances or discounts in lieu thereof, as set forth above, 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 April 6, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act, as amended. The respondents' answer to the complaint was filed on June 14, 1948. On March 29, 1949, however, said respondents filed with the Commission a motion requesting leave to withdraw said original answer and to file in lieu thereof a substitute answer in which, for the purposes of this proceeding and with certain explanations and limitations, they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts, but reserved to themselves the right to file briefs and present oral argument as to what order, if any, should be issued upon the facts admitted; and the Commission, by order entered herein, on December 15, 1949, granted said motion. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' substitute answer thereto, a memorandum proposing disposition of the case, filed by counsel in support of the complaint, attached to which memorandum was a proposed form of order to cease and desist, and a memorandum with respect to disposition of the matter filed on behalf of the respondents (the respondents in the meantime having waived their right to file briefs and present oral argument); 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. The respondent, Bonner Packing Co., is a corporation organized, existing and doing business under the laws of the State of California, with its office and principal place of business located at 626 Blix Building, Fresno, Calif. Said respondent also maintains a packing plant at Logan, Calif.

PAR. 2. The respondent, Charles W. Bonner, is an individual residing in Fresno, Calif. He is now president of Bonner Packing Co., and for a substantial period of time since June 19, 1936, he has been a substantial stockholder and an officer of said corporation. After

becoming an officer of Bonner Packing Co. and at the present time, and for some time past as president of Bonner Packing Co., respondent Bonner has exercised, and he 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. The respondent, Claire P. Hill, is an individual residing in Fresno, Calif. He is now first vice president and sales manager of Bonner Packing Co., and for a substantial period of time since June 19, 1936, he has been a substantial stockholder and an officer of said corporation. After becoming an officer of Bonner Packing Co. and at the present time, and for some time past as first vice president and sales manager of Bonner Packing Co., respondent Hill has exercised, and he 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. The respondent, M. P. Davison, is an individual residing in Fresno, Calif. He is now second vice president of Bonner Packing Co., and for a substantial period of time since June 19, 1936, he has been a substantial stockholder and an officer of said corporation. After becoming an officer of Bonner Packing Co. and at the present time, and for some time past as second vice president of Bonner Packing Co., respondent Davison has exercised, and he 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. The respondent, Alfred U. Thomsen, is an individual residing in Fresno, Calif. He is now secretary treasurer of Bonner Packing Co., and for a substantial period of time since June 19, 1936, he has been a substantial stockholder and an officer of said corporation. After becoming an officer of Bonner Packing Co. and at the present time, and for some time past as secretary treasurer of Bonner Packing Co., respondent Thomsen has exercised, and he 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. The respondent corporation, Bonner Packing Co., is now, and since prior to June 19, 1936, it has been, engaged in the business of processing, packing, selling and distributing apricots, figs, peaches, raisins, nectarines, and other fruits, all of which products are hereinafter designated collectively as dried fruits; and the individual respondents, acting by and through said corporate respondent, are now, and at all times mentioned herein they have been, engaged in the same

business. The respondents sell their dried fruits to many nationally known firms, including packing companies, wholesale grocers, chain grocery stores, independent grocery stores and many other buyers located in various sections of the United States, and at all times mentioned herein the respondents have maintained a continuous current of trade and commerce in said dried fruits among and between the various states of the United States.

PAR. 7. The respondents have conducted their business of distributing dried fruits by three separate and distinct methods, namely, (1) by selling such products through brokers who, as the respondents' sales agents, have made sales to buyers and have been paid for their services regular commissions or brokerage fees, usually 2½ percent of the invoice sales prices, which method of doing business was not challenged by the complaint herein, (2) by selling such products directly to certain favored buyers, without the intervention of brokers, at prices which reflected the respondents' savings in commissions or brokerage fees, and (3) by selling such products through brokers to certain other favored buyers, but paying the brokers commissions or brokerage fees amounting to only a portion of the regular or customary rate and allowing directly to the buyers the other portion of the commissions or brokerage fees on such sales.

PAR. 8. (*a*) A broker of dried fruits, as the term "broker" is used herein, is a sales agent who negotiates the sale of dried fruits for and on behalf of a principal seller. Such a broker acts as the principal seller's sales agent, soliciting and obtaining orders for the principal's dried fruits at the principal's prices and on the principal's terms, and ordinarily transmits the orders received by him to his principal who, thereafter, invoices and ships the dried fruits directly to the buyer. As compensation for his services, a broker is paid a commission or brokerage fee, which is usually calculated as a certain percentage of the invoice sale price of the dried fruits sold. Such a broker is not a trader for profit and he does not buy the dried fruits from his principal or sell such products for his own account. He does not at any point in a transaction take title to or have any financial interest in the dried fruits sold by him, except for his commission or brokerage fee, and he neither makes a profit nor suffers a loss on any such transaction. That phase of the respondents' business involving the sale of their dried fruits through brokers in this manner is not involved in this proceeding.

(*b*) In addition to selling their dried fruits through brokers in the manner described in subparagraph (*a*), the respondents, for a substantial period of time subsequent to June 19, 1936, sold their products

in commerce directly to certain buyers who are known in the trade as "buying brokers." Such buyers generally designated themselves as brokers, merchandise brokers, or primary distributors, but in their transactions with the respondents they purchased dried fruits in their own names and for their own accounts and they did not in such transactions act as brokers. Such "buying brokers" transmitted their own purchase orders for dried fruits directly to the respondents and the respondents thereafter invoiced and shipped the products ordered directly to such "buying brokers," from whom the purchase price of the merchandise was collected. In such transactions, the respondents deducted from the faces of the invoices regular commissions or brokerage fees. For a short period of time subsequent to June 19, 1936, the respondents also continued their previous practice of selling their dried fruits in commerce directly to one other large buyer and of deducting from the faces of the invoices on such sales regular commissions or brokerage fees. The respondents state that this practice has now been discontinued and that they do not now sell any of their products directly to "buying brokers" or to other direct buyers and allow any commissions or brokerage fees on such sales.

(*c*) In selling their dried fruits through brokers in the manner described in subparagraph (*a*) of this paragraph 8, it is and has been the respondents' practice to pay a broker negotiating a sale a commission or brokerage fee amounting to 2½ percent of the invoice price of the products sold. For a substantial period of time subsequent to June 19, 1936, however, the respondents had a special arrangement with the George I. Taylor Co., a brokerage company of San Francisco, Calif., under the terms of which on sales to a number of selected buyers the broker was paid a commission or brokerage fee of only 1½ percent of the invoice price of the dried fruits sold, and under which arrangement the price of such products to the buyer was reduced by the amount of the remainder of the regular 2½ percent commission or brokerage fee. The respondents thus sold their dried fruits to such buyers at prices reflecting their savings in commissions or brokerage fees effected under this special arrangement. In some of their sales of dried fruits to these selected buyers, the respondents, instead of reducing the prices, allowed said buyers other concessions in the form of absorption of cartage or consolidation charges incident to pool car shipments, and these concessions likewise reflected the respondents' savings in brokerage on such sales. The respondents state that these practices also have now been entirely discontinued. They state further that all of their relations with the George I. Taylor Co. have now been terminated.

PAR. 9. The Commission therefore finds that since June 19, 1936, the respondents, in connection with the sale of their dried fruits in interstate commerce, have paid or granted to buyers thereof, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof, on purchases made for such buyers' own accounts.

CONCLUSION

The respondents' acts of paying and granting commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof, to buyers of dried fruits on purchases for such buyers' own accounts constituted violations of subsection (*c*) of section 2 of the Clayton Act, as amended.

Commissioner Mason not participating.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' substitute answer, in which answer said respondents, for the purposes of this proceeding and with certain explanations and limitations, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts, and certain memoranda with respect to disposition of the case, filed by counsel in support of the complaint and by counsel for the respondents, 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 USC, sec. 13):

It is ordered, That the respondent, Bonner Packing Co., a corporation, and its officers, and the respondents, Charles W. Bonner, Claire P. Hill, M. P. Davison, and Alfred U. Thomsen, individually and as officers of Bonner Packing Co., and said respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of dried fruits or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any purchaser, any thing of value as brokerage, or any commission, compensation, allow-

ance or discount in lieu thereof, upon any purchase made for such purchaser's own account.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Mason not participating.

IN THE MATTER OF

O. K. HAT NOVELTIES, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5694. Complaint, Aug. 19, 1949—Decision, Nov. 9, 1950

Where a corporation and the two officers who formulated and directed its policies, engaged in the manufacture and interstate sale and distribution of new hats, and of used or second-hand hats made from previously used hat bodies which they cleaned, dyed and blocked and to which, when necessary, they added new trimmings, sweat bands and linings so that, when finished, they had the appearance of new hats—

(*a*) Sold said renovated hats with no markings or labeling thereon to disclose they were in fact used or secondhand, whereby a substantial portion of the purchasing public was led to believe that the hats were new and purchased substantial quantities thereof, and with the result of placing in the hands of dealers purchasing such hats for resale a means of misleading the public with respect to said products; and

Where said corporation and its said officers, engaged in the manufacture for introduction into commerce, and in the sale, transportation and distribution therein, of hats composed in whole or in part of wool, reprocessed wool or reused wool as defined and so constituting "wool products" as defined in the Wool Products Labeling Act and subject thereto—

(*b*) Misbranded said products in violation of said Act and the rules and regulations promulgated thereunder by failing to affix thereto stamps, tags, labels, or other means of identification, or a substitute in lieu thereof, showing the percentage of the fiber weight of wool, fiber other than wool, and other information called for, including the name of the manufacturer or the manufacturer's identification number, and the name of a seller or reseller of the product, as provided for in rule 4, prior to its amendment, or the name of one or more persons subject to section 3 of the act:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission, and that the acts and practices immediately above set out were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

Before *Mr. William L. Pack*, trial examiner.
Mr. Charles S. Cox for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission,

having reason to believe that O. K. Hat Novelties, Inc., a corporation, and Herbert Schorr and Henry Fried, individually and as officers of O. K. Hat Novelties, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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:

Count I

PARAGRAPH 1. Respondent O. K. Hat Novelties, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 710 Wythe Avenue, Brooklyn, N. Y. Respondent Herbert Schorr is an individual and an official and principal stockholder in respondent O. K. Hat Novelties, Inc., with its office and principal place of business located at 710 Wythe Avenue, Brooklyn, N. Y. Respondent Henry Fried, also known as Henry Friedberg, is an individual and an official in the respondent O. K. Hat Novelties, Inc., with his office and principal place of business also located at 710 Wythe Avenue, Brooklyn, N. Y. Said individual respondents formulate, control and direct the policies and matters of the corporate respondent.

Said respondents act together and in cooperation each with the other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the manufacture of hats which are sold to purchasers thereof located at various points in the United States and in the District of Columbia. Respondents cause and have caused said hats, when sold, to be transported from their aforesaid place of business in Brooklyn, N. Y., to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past, a course of trade in said hats in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise 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 business, as aforesaid, respondents have manufactured hats which were made over from used, reprocessed or ashcan hat bodies without labeling the same as secondhand or reused hats; said previously worn or used hats are reconditioned by respondents by cleaning, dyeing and blocking same and wherever necessary, by adding new trimmings, sweatbands and linings, and sell said products in commerce as aforesaid.

Said hats, when offered for sale by respondents, have the appearance of new hats. When such hats, having the appearance of new hats, are offered to the purchasing public, they are not clearly and conspicuously labeled as being secondhand hats and therefore are readily accepted by members of the purchasing public as being new products.

Said hats are sold to retailers and other dealers without any label, marking or designation stamped thereon or attached thereto to indicate to the purchasing public or to the dealers that said hats are in fact secondhand products that have undergone certain processes that have given them the appearance of new products. As a result, a substantial portion of the purchasing public has been led to believe and is now being led to believe that they were and are new hats manufactured entirely from new materials. As a result of this mistaken and erroneous understanding and belief, substantial quantities of respondents' said hats have been purchased and are now being purchased by members of the public.

By said acts and practices respondents also place in the hands of the purchasers of their merchandise for resale a means and instrumentality whereby they may and do deceive and mislead the purchasing public as to the true facts in regard to respondents' said hats.

PAR. 4. The aforesaid acts and practices of the respondents 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.

Count II

PARAGRAPH 1. As and for paragraph 1 of this count II of its complaint against respondents, the Federal Trade Commission adopts and incorporates by reference and makes as a part hereof, as fully as if set out verbatim herein, all of that part of count I of this complaint down to and including paragraph 2 of said count I and further charges:

PAR. 2. Respondents are engaged in the introduction and the manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products as such products are defined in the Wool Products Labeling Act of 1939, in commerce as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool or reused wool as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since January 15, 1948, respondents have violated the provisions of said act and said rules and regulations in the introduction into commerce and in the manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce by causing said wool products to be misbranded within the intent and meaning of said act and said rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and sold, transported and distributed in said commerce as aforesaid were articles of wearing apparel, such as hats. Exemplifying respondents' practice of violating said act, and the rules and regulations promulgated thereunder, is their misbranding of the aforesaid products in violation of the provisions of said act, and said rules and regulations, by failing to affix to said products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller or the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

PAR. 4. The aforesaid acts, practices and methods of the respondents as herein alleged were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and 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 and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on the 19th day of August 1949, issued and subsequently served its complaint in this proceeding upon respondents O. K. Hat Novelties, Inc., a corporation, and Herbert Schorr and Henry Fried, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts. Subsequently, respondent Henry Fried appeared before a trial examiner of the Commission, theretofore designated and appointed by it to receive testimony and other evidence in this proceeding and to perform all other duties authorized by law, and, on November 2, 1949, respondents filed their joint answer herein, in which answer they admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to the said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, transcript of hearings, and the recommended decision of the trial examiner, the filing of briefs and privilege of oral argument before the Commission having been waived; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent O. K. Hat Novelties, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 710 Wythe Avenue, Brooklyn, N. Y. Respondent Herbert Schorr, an individual, is an officer of and the principal stockholder in the respondent corporation. Respondent Henry Fried, an individual, is also an officer of the corporate respondent. The individual respondents formulate, control, and direct the policies of the corporation.

All of the respondents act in cooperation with one another in doing the things hereinafter described.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the manufacture and sale of hats, some of which are new hats and others of which are used or second-hand hats, that is, hats made from used or second-hand hat bodies. Respondents cause and have caused their hats, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondents in their hats, as aforesaid, 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 business respondents manufacture hats from hat bodies which have previously been worn or used, such bodies being cleaned, dyed and blocked by respondents. Where necessary, respondents add to such bodies new trimmings, sweatbands and linings, and the finished product is then sold by respondents. Said hats, when offered for sale by respondents, have the appearance of new hats. Respondents' hats have been sold by them without any marking or labeling thereon disclosing that they are in fact used or second-hand, and a substantial portion of the purchasing public has been led to believe that said hats are new products. Substantial quantities of respondents' hats have been and are being purchased by the public under the erroneous and mistaken belief that such hats are new rather than second-hand.

Respondents' practices have served also to place in the hands of dealers purchasing such hats for resale a means and instrumentality whereby such dealers have been enabled to mislead the public with respect to the origin and nature of such hats.

PAR. 4. Respondents are engaged in the introduction and the manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' products (hats) are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since January 15, 1948, respondents have violated the provisions of said act and said rules and regulations in the introduction into commerce and in the manufacture for introduction into com-

merce, and in the sale, transportation and distribution of said wool products in said commerce by causing such products to be misbranded within the intent and meaning of said act and said rules and regulations.

PAR. 5. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder has been their misbranding of the aforesaid products by failing to affix thereto a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such product where such product contains a fiber other than wool.

In further violation of said act and of rule 4 of the rules and regulations promulgated thereunder by the Commission, as such rule existed until the amendment thereof as duly published in the Federal Register on August 1, 1949, respondents have engaged in misbranding by failing to affix to the aforesaid wool products a stamp, tag, or label, or other means of identification showing the name of the manufacturer or the manufacturer's identification number, and the name of a seller or reseller of the product as then provided for in said rule 4 of the rules and regulations, or the name of one or more persons subject to section 3 of the act with respect to such products.

CONCLUSION

All of the acts and practices of respondents as herein found are to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The acts and practices set forth in paragraphs 4 and 5 are also in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, joint answer of respondents admitting all the material allegations of fact set forth in said

complaint and waiving further hearings and intervening procedure, upon the transcript of hearings, and the recommended decision of the trial examiner; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

I. *It is ordered*, That the respondents, O. K. Hat Novelties, Inc., a corporation, and its officers, and Herbert Schorr and Henry Fried, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hats in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

(*a*) Representing that hats composed in whole or in part of used or second-hand materials are new or are composed of new materials by failing to stamp on the exposed surface of the sweatbands thereof, in legible and conspicuous terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that such products are composed of second-hand or used materials (e. g., "second-hand," "used," or "made-over"); provided that if sweatbands are not affixed to such hats, then such stamping must appear on the exposed surface of the inside of the body of the hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

(*b*) Representing in any manner that hats made in whole or in part from old, used or second-hand materials are new or are composed of new materials.

II. *It is further ordered*, That the respondents, O. K. Hat Novelties, Inc., a corporation, and its officers, and Herbert Schorr and Henry Fried, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of new, as distinguished from second-hand, hats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such hats, or other products, by failing to affix securely to or place on such prod-

ucts a stamp, tag, label, or other means of identification, showing in a clear and conspicuous manner:

(*a*) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(*b*) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(*c*) The name or the registered identification number of the manufacturer of such wool product, or of one or more persons engaged in introducing such wool product into commerce, or in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the provisions of section II of this order, concerning misbranding, shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That except for the limitations inherent in the provisions of section II of this order, nothing contained in this order shall be construed as limiting any applicable provisions of the Wool Products Labeling Act or of the Rules and Regulations promulgated thereunder.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

LARRY M. DEETER DOING BUSINESS AS EDUCATIONAL SURVEYS

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

Docket 5703. Complaint, Oct. 12, 1949—Decision, Nov. 9, 1950

Where an individual engaged in the interstate sale and distribution in combination offers of books including, among others, the New Standard Encyclopedia, Young Folks Library, and Funk & Wagnall's Dictionary to purchasers in Washington, Idaho, Montana, and Oregon, through personal solicitation by his agents who were compensated solely by commissions on each sale and whom he supplied with descriptive circulars procured from the publishers and with a stretcher showing one of the bindings of the encyclopedia and a prospectus thereof—

(*a*) Falsely represented that he was engaged in making surveys for various purposes, when in fact he was solely engaged in the sale of books and publications, and the only surveys he made were to locate prospective purchasers;

(*b*) Falsely represented that he was not selling the encyclopedia but only the supplements thereto, and that if the latter were subscribed to or purchased, the encyclopedia would be given as a gratuity, and also that certain books were given free or as a bonus without cost when the purchase price was fully paid up; and

(*c*) Falsely represented that the combination offer of the encyclopedia and its supplements was an introductory offer for advertising purposes, was at a reduced price substantially lower than the usual and regular price, or at a price substantially lower that that which would be charged when the encyclopedia was subsequently placed on the market, and that the combination was offered only to selected persons in each area;

When in fact said offer had been generally made since 1944 wherever he could find purchasers, was solely for profit, was at the same price at which offered to everyone everywhere and at which he had sold for a substantial time, and was not limited but was made to anyone likely to purchase;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, whereby it was induced to purchase substantial quantities of his said books:

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

As respects certain other charges of the complaint, there was no evidence that respondent represented that his selection of customers was by chance or by means of a drawing, or that books which respondent delivered to purchasers were not comparable, in any specific respect, with the samples exhibited, or that the encyclopedia was not comparable to competitive products.

With regard to the charge that respondent falsely represented that he had offices in the principal cities of the United States it appeared, among other things,

that for a time respondent had offices in Spokane, Denver, and Kansas City, and had letterheads and stationery, with the statement "Offices in the central cities," but that such stationery, with the possible exception of accidental or occasional use, was not used, and that there was no substantial evidence to support said charge.

With regard to the charge that respondent represented through use of the trade name "Educational Surveys" that he was engaged in the business of making surveys having to do with education, there was no evidence that the term was misleading or deceptive, except as to the implication which one might receive from the name itself, and the only evidence in the record as to that was to the contrary.

Before *Mr. Frank Hier*, trial examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Murphy & Bantz, of Spokane, Wash., 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 Larry M. Deeter, individually and trading as Educational Surveys, hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Larry M. Deeter is an individual trading and doing business as Educational Surveys with his office and principal place of business located at 217 Hyde Building in the city of Spokane, Wash. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of books including among others the New Standard Encyclopedia, Young Folks Library, and Funk & Wagnall's Dictionary.

PAR. 2. In the course and conduct of his business respondent causes his books when sold to be transported from his place of business in the State of Washington to purchasers thereof at their various locations in other States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in his said books in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of promoting the sale of said books, respondent has made many statements and representations to prospective purchasers of said books in advertising matter and by means of representations of his

salesmen. Among and typical of such statements and representations are:

1. That respondent is engaged in making surveys for various purposes.

2. That respondent is not selling the encyclopedia but if the loose-leaf supplements published for the purpose of keeping the encyclopedia up to date are purchased, the encyclopedia will be given without additional charge and as a gratuity.

3. That certain books are given without cost to the purchaser when the cost of the supplements is fully paid for.

4. That the combination offer of the supplements and encyclopedia is an introductory offer for advertising purposes; is at a reduced price and substantially lower than the usual and regular selling price for the books.

5. That the combination is offered to only selected persons in each area and that such persons are selected by chance by means of a drawing.

6. That the books sold and given are comparable in all respects to the samples exhibited.

7. That the encyclopedia is comparable in every respect to competitive products.

8. That respondent has offices in the principal cities of the United States.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondent was not and is not engaged in making surveys of any sort or nature, his business being solely that of selling books for profit. Respondent is actually engaged in selling the encyclopedia and the loose-leaf supplements and the price represented as being the price charged for the supplements includes the charge for the encyclopedia. Any book or books sent to a purchaser at the time of the completion of the payments on the contract of purchase are not given without cost but the cost thereof is included in the contract price. The combination offer at a certain price is not an introductory offer; is not for advertising purposes nor is it at a reduced or lower price but is the usual and regular price for which said combination is sold. The offer is not confined to selected persons in a particular area but is available to all persons who may desire to purchase. No drawing of any sort is made for the purpose of selecting persons to whom the offer is made. The books delivered are inferior in quality and contents to the samples exhibited by salesmen. The encyclopedia from the standpoints of

accuracy, coverage, educational, reference, and in other respects is less valuable than some competitive products. The respondent maintains an office only in the city of Spokane, Wash.

PAR. 5. Respondent, through the use of the trade name "Educational Surveys," represents and has represented that he is engaged in the business of making surveys having to do with education. Such representation is false, misleading, and deceptive. In truth and in fact, said respondent makes no surveys of any kind or description.

PAR. 6. The use by the respondent, directly and through his agents, of the foregoing false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations are true. As the result thereof the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's books.

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.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated November 9, 1950, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 12, 1949, issued and subsequently served its complaint in this proceeding upon respondent Larry M. Deeter, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony

and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by all counsel; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Larry M. Deeter is an individual trading and doing business as Educational Surveys with his office and principal place of business located at 217 Hyde Building in the city of Spokane, Wash. Respondent is now and since 1944 has been engaged in the sale and distribution of books, including among others, the New Standard Encyclopedia, Young Folks Library, and Funk & Wagnall's Dictionary.

PAR. 2. Respondent sells through agents or solicitors who canvass individual prospective purchasers by personal persuasion in Washington, Idaho, Montana, and Oregon. When executed orders or contracts are consummated by such solicitors, they are forwarded to respondents' office in Spokane, Wash. Respondent then forwards directions to the book bindery located in Columbia, Mo., for the books to be shipped from there directly to the purchaser under respondent's label. Respondent maintains and has since 1944 maintained a constant and substantial course of trade in books and publications in commerce among and between the various States of the United States.

PAR. 3. Respondent does no direct mail, radio or periodical advertising but does supply his agents with circulars describing and pictorializing the books which he sells, which literature he procures from the publishers. Respondent also supplies his agents with a stretcher showing one of the bindings of the New Standard Encyclopedia and a prospectus of same, this being composed of selected pages of the encyclopedia bound in a single volume. Respondent sells his books in combination offers of the encyclopedia, the 10 year supplements thereto, and one or more other books or sets of books, such as a dictionary, an atlas or the Young Folks Library. The price of each combination varies from $79.50 to $99.50, depending on the type of binding and what is included in the combination offer. Each offer includes a right, privilege or option of getting a quarterly supple-

ment each year for 10 years to the encyclopedia at a cost of $1.85 per year, which is to be sent in each year by the subscriber with a coupon furnished him by respondent when the encyclopedia is delivered. The New Standard Encyclopedia and its supplements are published by the Standard Education Society, 130 North Wells Street, Chicago, Ill., from whom respondent buys the encyclopedia when and as he sells it. Respondent's agents are compensated entirely by commissions on each sale, which vary from 30 to 40 percent.

PAR. 4. In the course and conduct of his business, as hereinabove described, and for the purpose of promoting the sale of said books and publications respondent, through his agents, has made statements and representations to prospective purchasers as follows:

(*a*) That respondent is engaged in making surveys for various purposes rather than selling books.

(*b*) That respondent is not selling the encyclopedia but is selling the supplements thereto and if the latter are subscribed to or purchased the encyclopedia will be given as a gratuity.

(*c*) That certain books are given free or as a bonus without cost when the purchase price is fully paid up.

(*d*) That the combination offer of the encyclopedia and its supplements is an introductory offer for advertising purposes, is at a reduced price substantially lower than the usual and regular price or is at a price substantially lower than will be charged when the encyclopedia is subsequently placed on the market.

(*e*) That the combination is offered only to selected persons in each area.

(*f*) That the books sold and delivered are comparable to samples exhibited.

(*g*) That the encyclopedia is comparable to competitive products.

PAR. 5. These representations, with the exception of the last two, are false, deceptive, and misleading. Respondent is engaged solely in the sale of books and publications and is not engaged in making surveys, except to locate prospective purchasers. Respondent sells the encyclopedia. The combination offer price includes the cost of everything included in the offer. Nothing is given any purchaser free or without cost. The combination offer is not an introductory offer but is and has been since 1944 generally made wherever respondent can find purchasers. Such offer is not for advertising purposes but is solely for profit. Such offer is not at any reduced or special price but at the same price which respondent offers to everyone everywhere and at which he has sold for a substantial time. The offer is not con-

fined to selected persons in a particular area but is available and made to anyone likely to purchase.

PAR. 6. There is no evidence that respondent has represented that his selection of customers is by chance or by means of a drawing. There is no substantial or satisfactory evidence that books which respondent delivered to purchasers were not comparable (in any specific respect) with the samples exhibited. There is no substantial evidence that the encyclopedia is not comparable to competitive products.

PAR. 7. When respondent first started in business, he maintained offices in Spokane, Wash., Denver, Colo., and Kansas City, Mo. He had letterhead stationery printed with the statement "offices in the Central Cities" thereon, but except for possible but unproved accidental or occasional use, such stationery was not used. Respondent since 1946 has had but one office at 217 Hyde Building, Spokane, Wash. There is no evidence of widespread, substantial, or consistent use of the representation on such stationery. There is thus no substantial evidence to support the charge in the complaint that respondent has falsely represented that he has offices in the principal cities of the United States.

PAR. 8. There is no evidence that the term "Educational Surveys," which the respondent uses as a trade name, is misleading or deceptive, except the implications which one might receive from the name itself. The only evidence in the record is that the name did not and does not imply that respondent is engaged in making surveys. The preponderance there is that the name is not misleading or deceptive as charged in the complaint.

PAR. 9. The use by the respondent of the representations set out hereinabove in paragraph 4, as found to be false, misleading and deceptive in paragraph 5 hereinabove, has had, now have and will have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations were or are true, as a result whereof the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's books.

CONCLUSION

The aforesaid acts and practices of the respondent, as hereinabove described and found, are all to the injury and prejudice 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

It is ordered, That Larry M. Deeter, his employees, representatives or agents, trading under the name Educational Surveys, or under any other name, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of books or other publications of whatever nature, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's combination offer of the New Standard Encyclopedia and the supplements thereto, published for the purpose of keeping the encyclopedia current, is an introductory offer or a special offer for advertising purposes.

2. That such offer is at a reduced or special price substantially lower than the usual or regular selling price or is at a price substantially lower than will be charged when the encyclopedia is subsequently placed on the market.

3. That such offer is made only to selected persons in a particular community or area.

4. That respondent is engaged in making surveys for various purposes.

5. That respondent is not selling the encyclopedia, but is selling the supplements thereto and if the latter are subscribed for or purchased, the encyclopedia will be given as a gratuity.

6. That any books are given free or as a bonus without cost when the purchase price is fully paid up.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent, Larry M. Deeter, shall within sixty (60) days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of November 9, 1950].

Syllabus

IN THE MATTER OF

CORN PRODUCTS REFINING COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5502. Complaint, June 20, 1947—Decision, Nov. 20, 1950

As respects the saving proviso in subsection (b) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act, where lower prices involved arose from or out of any planned common course of action respecting prices, such lower prices, as regards said savings proviso, could not have been made in good faith to meet competition.

Where nine principal producers of corn derivatives and seven of their sales subsidiaries, engaged in the manufacture and processing, and interstate sale and distribution of said products, produced, in the main, in a midwestern area located around and near Chicago—which, (1) in the instant proceeding, included corn syrup unmixed, pearl starch, gloss starch, powdered starch, thin boiling starch, molding starch, refined grits, dextrin, corn sugar, refined corn oil, crude corn oil, soapstock, and mixed corn syrup, but did not include dextrose (refined corn sugar), Amioca (starch made from waxy maize), or adhesives or any product of different character produced through further processing of any of said products; (2) constituted important articles of commerce and were consumed as food in large quantities in candy, jellies, preserves, baked goods, etc., and also had many industrial uses, including use in commercial laundry preparations, soaps and cleaners, finishing textiles, dies, explosives and drugs; and of which (3) said producers accounted for about 95 percent of the production in the United States;

In (1) carrying on their operations in conjunction with four unincorporated trade associations, of which they were members, which were concerned with bulk corn derivatives, packaged starch, corn syrup, and corn oil, both packaged and in bulk, and which, organized shortly prior to the consent decree of April 6, 1932, dissolving the Corn Derivatives Institute, were operated as a single enterprise by reason of common membership and headquarters, and a common secretary, constituted central agencies for exchanging and relaying information on a daily or other periodical basis as to the quotations, prices, terms and conditions of sale of each member, intimate details of each member's business, and related matters, both through direct gathering and dissemination of information, and the provisions for meetings and discussions of members and for the making and following up of price and related inquiries; and (2) in selling their products through use of four geographical pricing systems, namely (*a*) the single basing point, (*b*) multiple basing point with every plant a basing point, (*c*) zone, and (*d*) a combination of single basing point in areas relatively near such point, and zone system in the more distant areas;

Acting in concert and on the basis of a common understanding or meeting of minds that they adhere to the prices, terms and conditions of sale agreed upon and in accordance with policies, plans, etc., discussed among themselves and with said secretary—

(*a*) Contemporaneously used the same geographical pricing system for any corn derivative in the same container, whereby any seller was enabled to match exactly all the other sellers' quoted prices, where each seller used identical practices in dealing with the many variables involved, including the price at any basing point, the zone areas, the delivered cost to the buyer, in any zone, the refusal to sell f. o. b. production point, the diversion of shipments from one destination to another, allowances for return of container, and the applicable freight rates and charges;

(*b*) Filed their current and future prices, and other information explaining, modifying or affecting the same with said secretary for distribution among their competitors;

(*c*) Filed and jointly considered the intimate details, including prices, of their respective past and future sales transactions, for similar dissemination by said secretary or at the meetings of their said four associations; and utilized the price inquiry system available thereunder with the intent and effect of making cooperative comparison between their past, current and future prices, whether received in actual sales transactions, or contained in price announcements or explanations and modifications filed and distributed through said common agent or jointly considered at said meetings;

(*d*) Made use of said association as vehicles through which prices were made uniform and deviations from such uniformity were effectively detected, explained, thrashed out and dealth with;

(*e*) Through said instrumentalities fixed and maintained allowances for return of containers or unused corn derivatives; differentials for warehouse, tank car or other means of delivery to customers; charges for installation of pump and other service facilities and for performing service functions for customers; terms and conditions as to guarantee against price declines; and terms and conditions governing the booking of orders for future delivery;

(*f*) Made use generally of said four associations as media or central agencies for exchanging information as to the many variables involved in the four geographical pricing systems employed and reached agreement thereon, and thereby were enabled to and did generally quote identical prices at destination, and to make sales involving the same cost at destination to any purchaser;

Capacity, tendency, and effect of which agreements, and of the acts and practices performed in connection therewith by said corporations, as above set out, were—

1. To hinder, lessen, restrain and suppress competition in the sale and distribution of corn derivatives, in, among and between the several states;

2. To deprive purchasers of said products of the benefits of competition in price;

3. To systematically maintain artificial and monopolistic methods and prices in the sale and distribution thereof, including common rate factors in pricing;

4. To require that purchases of corn derivatives be made on a delivered price basis, and to prevent and defeat efforts of purchasers to avoid such requirements;

5. To maintain uniform terms and conditions of sale; and

6. Otherwise to promote and maintain said corporations' geographical price systems and to obstruct and defeat any form of competition which threatened or tended to threaten the continued use and maintenance of said system and the uniformity of prices created and maintained thereby; and

Where said corporations, in making concerted use of geographical price systems, under which delivered prices of each necessarily differed as between buyers at different destinations, and necessarily injured, destroyed, and prevented competition among said corporations—

(*g*) Discriminated in price in the case of each through the use by each of said geographical systems of pricing, under which differences in price could not be justified through the differences in cost, and with respect to which there was no evidence that they resulted from lower prices made in good faith to meet the equally low price of a competitor:

Held, (*a*) That aforesaid agreement and combination, and the acts of said corporations pursuant thereto, as above set out, constituted unfair methods of competition in commerce; and,

(*b*) That the discriminations in price by each of said corporations, as above set out, constituted violations of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

As respects the use of the Corn Refiners Statistical Bureau, of which the other three trade associations were in effect simply divisions, as a medium or central agency for exchanging or relaying information, and as a vehicle by which prices were made uniform and through which deviations therefrom could be and were effectively detected and dealt with: while each of the respondents did not directly or through its representatives participate in each of the discussions and joint considerations involved in such activities, each did, either directly or through a representative or subsidiary, participate in a number of such discussions, joint considerations and acts and practices related to such matters, and each generally had knowledge, as respects those in which it did not participate, of the participation of the others, and each, while having knowledge of such activities, failed to disassociate himself from the Bureau until shortly prior to its dissolution in September 1946, with the exception of one—which did so sometime theretofore, though continuing its membership until the dissolution of the associations—and thereby participated with the others in collectively affecting prices, terms and conditions of sale.

Before *Mr. William L. Pack*, trial examiner.

Mr. T. Harold Scott and *Mr. Francis C. Mayer* for the Commission.

Mr. Carl R. Miller, of Decatur, Ill., and *Pope & Ballard*, of Chicago, Ill., for respondents, who were also represented as follows:

Lord, Day & Lord, *Mr. Samuel A. McCain* and *Mr. Warren S. Adams 2d*, of New York City, for Corn Products Refining Co., Corn

Products Sales Co., a New Jersey corporation, and Corn Products Sales Co., a Massachusetts trust.

Mr. Charles C. LeForgee, of Decatur, Ill., for A. E. Staley Manufacturing Co. and Staley Sales Corp.

McKone, Badgley, McInally & Kendall, of Jackson, Mich., and *Cobbs, Logan, Armstrong, Teasdale & Roos*, of St. Louis, Mo., for Clinton Foods, Inc., Clinton Sales Co., Bliss Syrup and Preserving Co., and D. B. Scully Syrup Co., Inc.

Breed, Abbott & Morgan and *Mr. Robert W. Austin*, of New York City, for Penick and Ford, Ltd., Inc.

Hall, Cunningham & Haywood, of New York City, for American Maize-Products Co.

Shepley, Kroeger, Fisse & Ingamells, of St. Louis, Mo., for Anheuser-Busch, Inc., A. A. Busch and Co., Inc., A. A. Busch and Co. of Massachusetts and Southern Syrup Co., Inc.

Winston, Strawn, Shaw & Black, of Chicago, Ill., and *Cahill, Gordon, Zachry & Reindel*, of New York City, for The Hubinger Co.

DeBevoise, Plimpton & McLean, of New York City, for National Starch Products, Inc.

Ross, McCord, Ice & Miller, of Indianapolis, Ind., for Union Starch & Refining Co. and Union Sales Corp.

COMPLAINT

This complaint is filed to obtain relief from what the Commission has reason to believe are violations by the respondents, jointly and severally, as hereinafter alleged in count I herein, of section 5 of an act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," commonly referred to as the Federal Trade Commission Act, as approved September 26, 1914, and amended March 21, 1938 (38 Stat. 717; 15 U. S. C. A. sec. 41; 52 Stat. 111), and from their violations, as alleged in Count II herein of section 2 (a) of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly referred to as the Clayton Act, as approved October 15, 1914, and amended June 19, 1936 (38 Stat. 730; 15 U. S. C. A. sec. 13, as amended).

COUNT I

Charge of the Federal Trade Commission Act

PARAGRAPH 1. 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 parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of section 5 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:

Description of respondents

PAR. 2. Each of the respondents against whom relief is sought is particularly named and described as follows:

(*a*) Corn Products Refining Co. (sometimes hereinafter referred to as Corn Products) is a New Jersey corporation organized in 1906 with principal office at 17 Battery Place, New York, N. Y., and operates manufacturing plants at Argo and Pekin, Ill.; Kansas City, Mo.; and Edgewater, N. J., among others. Certain of its acts and practices as alleged herein have been carried on through and by means of wholly owned and controlled subsidiary companies,

(*b*) Corn Products Sales Co., a New Jersey corporation, and,

(*c*) Corn Products Sales Co., a Massachusetts trust;

(*d*) A. E. Staley Manufacturing Co. (sometimes hereinafter referred to as Staley) is a Delaware corporation organized on or about November 12, 1906, with office and principal place of business in Decatur, Ill. Certain of its acts and practices have been carried on through and by means of

(*e*) Staley Sales Corp., a Delaware corporation with office and principal place of business in Decatur, Ill., a wholly owned and controlled subsidiary of Staley;

(*f*) Clinton Industries, Inc. (sometimes hereinafter referred to as Clinton), is a Delaware corporation with principal office at 408 Pine Street, St. Louis, Mo., organized on or about November 19, 1945, as a successor to the business of Clinton Co., an Iowa corporation, and National Candy Co., Inc., a New Jersey corporation. Certain of its acts and practices as alleged herein have been conducted through and by means of wholly owned and controlled subsidiary corporations including,

(*g*) Clinton Sales Co., an Iowa corporation with principal office at Clinton, Iowa,

(*h*) Bliss Syrup & Preserving Co., a Missouri corporation with its principal office at 1327 St. Louis Avenue, Kansas City, Mo., and,

(*i*) D. B. Scully Syrup Co., Inc., an Illinois corporation, with principal office at 321 East Illinois Street, Chicago, Ill.;

(*j*) Penick & Ford, Ltd., Inc. (sometimes hereinafter referred to as Penick & Ford) is a Delaware corporation, with its principal office at 420 Lexington Avenue, New York, N. Y., with a manufacturing plant at Cedar Rapids, Iowa, among other places. Penick & Ford is a successor corporation organized on or about February 7, 1920 to Penick & Ford, Ltd., a Louisiana corporation organized in 1898;

(*k*) American Maize-Products Co. (sometimes hereinafter referred to as American Maize) is a Maine corporation with its principal office at 100 East Forty-second Street, New York, N. Y., and its principal manufacturing plant in Roby, Ind.;

(*l*) Anheuser-Busch, Inc. (sometimes hereinafter referred to as Anheuser-Busch) is a Missouri corporation with its principal office and manufacturing plant in St. Louis, Mo. Certain acts and practices as alleged herein by and in behalf of Anheuser-Busch have been conducted through and by means of wholly owned and controlled subsidiary corporations,

(*m*) A. A. Busch and Co., Inc.,

(*n*) A. A. Busch and Co. of Massachusetts, and,

(*o*) Southern Syrup Co., Inc.;

(*p*) The Hubinger Co. (sometimes hereinafter referred to as Hubinger) is an Iowa corporation with its principal office and manufacturing plant located at Keokuk, Iowa, and is a successor to J. C. Hubinger Bros., which commenced the manufacture and sale of corn derivatives during or about the year 1903;

(*q*) National Starch Products, Inc. (sometimes hereinafter referred to as National) is a Delaware corporation with its principal office at 270 Madison Avenue, New York, N. Y. Respondent National was formerly known as National Adhesives Corp., and trades under its own name and under the names Piel Brothers Starch Co. and National Adhesives Corp. Respondent National is the successor to the business of the former Piel Bros. Starch Co. which first entered the manufacture and sale of corn derivatives during or about the year 1903;

(*r*) Union Starch & Refining Co. (sometimes hereinafter referred to as Union) is an Indiana corporation with its principal office in Columbus, Ind., and manufacturing plants there and at Granite City, Ill. Certain of the practices by and on behalf of respondent Union as alleged herein have been conducted through and by means of,

(*s*) Union Sales Corp., a wholly owned and controlled subsidiary corporation.

Definitions and explanations of terms

PAR. 3. Some of the terms hereinafter used are defined as follows:

(1) "Corn derivatives," as used herein is defined to mean and include all products of the processing of corn known generally as corn syrups, corn sugars, dextrins, starches, and corn oils, and including, among others, the products known in the trade as glucose, corn syrup unrefined, pearl starch, gloss starch, powdered starch, thin boiling starch, thick boiling starch, moulding starch, cube starch, grits, refined grits, dextrin, dextrose, corn sugar, refined corn oil, unrefined corn oil, soapstock, refined corn syrup, mixed corn syrup, and maple flavored corn syrup.

(2) "Commerce," as used in count I herein, means commerce as defined in the Federal Trade Commission Act.

Description of the commerce and industry of respondents

PAR. 4. The respondents herein, either directly or indirectly through subsidiary corporations, are engaged in the manufacture, sale and distribution of corn derivatives in commerce and the acts and practices hereinafter alleged have all been carried on by or in behalf of respondents in furtherance of said manufacture, sale and distribution in commerce. Between and among them the respondents account for about 95 percent or more of the corn derivatives manufactured and sold in the United States and it is to them that the public must look for its supplies of such products. Corn derivatives are important articles of commerce and are consumed in large quantities as food; as principal ingredients in manufacturing candy, jellies, preserves, baked goods, and other food products; in brewing malt beverages; in home and commercial laundries; in finishing textiles; in manufacturing adhesives and soaps, and in other industries and trades too numerous to list herein.

Background of practices in the industry

PAR. 5. In 1890 there were located in the United States approximately 23 companies engaged in the manufacture of starch and 7 companies in the manufacture of glucose. Thereafter, through means of a holding company, National Starch Manufacturing Co., a number of the small, hitherto independent plants were combined into an enterprise controlling between 75 and 80 percent of the starch

business. Similarly, a combination was effected in Glucose Sugar Refining Co. of the principal part of the glucose industry. In 1902 the Corn Products Co., a direct predecessor of respondent Corn Products, was organized and acquired the business of Glucose Sugar Refining Co. and National Starch as well as several other starch and glucose producers which had not theretofore been controlled. Respondent Corn Products was organized in 1906 as a successor of Corn Products Co. and acquired the remaining interests in the glucose field so that in 1906 it did 100 percent of the business in glucose and 64 percent of the business in starch, accounting for approximately 90 percent of the total production of corn derivatives.

From 1903 to 1912 Piel Brothers Starch Co. (to whose business respondent National is successor) Douglas & Co. (to whose business respondent Penick & Ford is successor), and respondents Union, Staley, Clinton, and American Maize entered the business and accounted, in 1913, for approximately 35 percent of the production of the industry. At the present time, respondent Corn Products is the largest producer in the industry, accounting for 50 percent or more of the total business and 90 percent or more of the business in the various packaged products.

A suit in equity was brought by the United States under the Sherman Act in March 1913 against respondent Corn Products, Penick & Ford, Ltd. (to which respondent Penick & Ford is successor) and certain individuals which resulted in an interlocutory decree on May 14, 1915, effecting a dissolution of the combination of Corn Products and Penick & Ford, Ltd., and forbidding acquisition of any interest or control therein by Corn Products; and in the entry of a final decree on March 31, 1919, by which respondent Corn Products was declared to be a combination in restraint of trade and directed to dispose of certain of its properties.

Thereafter, respondents herein and others organized a trade association known as Corn Derivatives Institute for the purpose of promoting their mutual interests in the manufacture and sale in commerce of corn derivatives. A suit in equity was brought against Corn Derivatives Institute and its members, including the present respondents and the companies to whose interests said respondents have succeeded, seeking relief from a combination and conspiracy to restrain trade and fix prices and a consent decree was entered on April 6, 1932, in the District Court for the Northern District of Illinois, restraining the combination and conspiracy, and dissolving Corn Derivatives Institute.

Activities conducted through trade associations and otherwise

PAR. 6. Respondents have conducted the activities more fully described hereinafter in paragraphs 7 through 9 through direct cooperation between and among themselves and through the medium of four voluntary, unincorporated associations which were formed immediately following dissolution of Corn Derivatives Institute; namely, Corn Refiners Statistical Bureau (hereafter described as the Bureau), Starch Manufacturers' Association (hereafter described as the Starch Association), Corn Oil Producers' Association (hereafter described as the Oil Association), and Syrup Mixers' Society (hereafter described as the Society). Each of the Associations described above was organized by the respondents and has been supported, promoted, and maintained by them from some time during the year 1932 to September or October 1946, for the purpose of serving the mutual interests of the respondents in the manufacture, sale, and distribution of corn derivatives, except that respondents Anheuser-Busch and Union have not been members of the Starch Association; and National has participated only in the activities of the Bureau and the Starch Association. The four associations have maintained common principal offices at 208 South LaSalle Street, Chicago, Ill., and one Oscar L. Moore has been the secretary and directed the administrative affairs of all of them. While the affairs of the associations have been ostensibly separate, for administrative or other purposes, through common interests, common membership of the principal producing respondents, common financial support, common offices and management, the four associations have been operated as a single enterprise for the mutual benefit of each of the respondents herein.

Cooperative activity

PAR. 7. Respondents are now and for many years past have been engaged in a combination, conspiracy, and a common course of action in fixing and maintaining prices, terms and conditions of sale of corn derivatives sold by them in interstate commerce. Said combination, conspiracy, and common course of action has been supported and maintained by agreements, concert of action, and cooperation entered into and carried on for the purpose and with the effect of promoting a system of delivered price quotations in connection with the sale and delivery of corn derivatives and the matching of said delivered price quotations, terms, and conditions by all of the manufacturing and primary selling respondents, as set forth in quotations by two or more

sellers to any customer or prospective customer. Pursuant to, in furtherance and in effectuation of the purposes and objectives of the aforesaid combination, common course of action, and cooperation, respondents have formulated, adopted and performed and put into effect among others the practices and used the methods, systems and policies listed, described and set forth in the immediately succeeding subparagraphs numbered 1 to 21, inclusive of this paragraph 7, all and singularly for purpose and with the effect of eliminating and suppressing competition between and among themselves.

(1) Respondents meet together at frequent intervals to exchange information and discuss and inquire as to prices, terms, and conditions of sale quoted by various respondents;

(2) Respondents disseminate between and among themselves on a daily basis full details of transactions of sale by each of the respondents;

(3) Respondents disseminate between and among themselves at frequent intervals complete information regarding production, sales, shipments, and inventories of corn derivatives of the various respondents;

(4) Respondents disseminate between and among themselves at frequent intervals current and future quotations of prices, terms, and conditions of sale offered to the trade by various respondents;

(5) Respondents compile, disseminate, and employ common collections of freight rates for the purpose of calculating delivered price quotations;

(6) Respondents sell various corn derivatives, including corn syrup, starch, corn sugar, and corn oil, on the basis of delivered price quotations calculated by adding to a base price at designated geographical points the rail freight from such points to the destination of shipment;

(7) Respondents sell various corn derivatives, including packaged syrup, packaged corn and gloss starches, refined corn oil and corn sugar, on the basis of zone delivered price quotations, whereby respondents divide the country into a score, more or less, of geographical territories, within certain of which the same delivered price is quoted to all customers of the same class within each zone, and whereby in certain other zones delivered price quotations are compiled by adding rail freight rates from a designated base point to destination of sale as set forth in (6) above, applicable to transactions within the borders of such zones;

(8) Respondents refuse to permit deliveries of various corn products to buyers' trucks or to calculate delivered price quotations by adding truck or water carrier rates to base prices, or upon the basis

of transportation charges involved in shipment of corn derivatives to customers, where such practices would result in lower delivered price quotations than those calculated as set forth in (6) and (7) above;

(9) Respondents refuse to quote or sell corn derivatives on prices calculated by adding actual shipping charges to a price f. o. b. the actual shipping point;

(10) Respondents fix and maintain identical credit terms and cash, quantity and trade discounts;

(11) Respondents fix and maintain identical allowances for returns of containers and of unused corn derivatives;

(12) Respondents fix and maintain identical differentials for warehouse, tank car and other means of delivery to customers;

(13) Respondents fix and maintain identical charges for installation of pumping and other service facilities and for performing service functions for customers;

(14) Respondents fix and maintain identical terms and conditions for guarantee against price declines on orders of corn derivatives;

(15) Respondents fix and maintain identical terms and conditions governing the booking of orders for future delivery of corn derivatives, and the lengths of time and prices at which such orders may be booked;

(16) Respondents fix and maintain identical terms and conditions governing payment of advertising and promotional allowances to customers;

(17) Respondents fix and maintain identical terms and conditions for giving of bonus or free goods to customers;

(18) Respondents fix and maintain identical terms and conditions for label allowances on packaged corn derivatives;

(19) Respondents fix and maintain identical terms and price differentials to apply between factory and private brands of packaged corn derivatives;

(20) Respondents fix and maintain identical container differentials;

(21) Respondents maintain an inquiry system whereby daily reports of transactions and quotations of respondents which deviate from the prices, terms, and conditions previously reported, as in (3) and (4) above, are questioned and the reporting member required to explain such deviations.

Methods of computing delivered prices

PAR. 8. Pursuant to the common purpose of matching delivered price quotations alleged in the preceding paragraph 7, respondents

have systematically prevented differing transportation charges involved in shipping to differently located customers from affecting the cost of goods to customers by selling corn derivatives on the basis of delivered price quotations made up, in the case of the bulk goods, of a price f. o. b. designated basing points plus the rail freight rate to customers' destinations, and in the case of packaged goods, by dividing the country into numerous arbitrary geographical zones or territories, within certain of which a flat delivered price is quoted irrespective of location of the customer within the zone while to customers within certain other zones prices are quoted on a basis of a price f. o. b. designated basing points plus rail freight to destination.

(1) Illustrative of the methods so employed in quoting and selling bulk corn derivatives, such as starch, CSU corn oil and corn sugar, respondents have quoted and sold refined corn oil at prices made up by adding to a quotation f. o. b. Chicago the rail freight from Chicago to the customer, wherever located in the United States, even though a substantial quantity of such oil so quoted and sold by respondents was neither manufactured at nor shipped from Chicago, and even though the freight charges employed in making the delivered price quotations have never been incurred in shipment of the goods.

(2) Illustrative of the methods so employed in quoting and selling packaged corn derivatives, including refined corn oil, corn and gloss starch, corn and mixed corn syrup, corn sugar and dextrose, respondents have quoted and sold refined corn oil in small packages on the following basis:

(*a*) For the purpose of quoting and selling as set forth above, respondents have divided the country into the following zones or territories:

Territory 1:

Entire United States except territories 2 to 8 inclusive.

Territory 2:

Maryland—entire State.

Washington, D. C.

Pennsylvania—town of Meyersdale only.

West Virginia—counties of Berkeley, Jefferson, Morgan, Hampshire, Hardy, Mineral, Grant, Pendleton.

Virginia—all counties except Tazewell, Buchanan, Wise, Lee, Scott, Russell, Washington, Dickinson, Grayson (except Fries), Smyth.

North Carolina—entire State.

Territory 3:

Entire States of South Carolina, Georgia, Florida, and Louisiana. Entire States of Alabama and Mississippi except for counties in territory No. 4.

Territory 4:

Alabama—north of and including the following counties: Pickens, Tuscaloosa, Bibb, Shelby, Talladiga, Clay, northern half of Randolph.

Mississippi—north of and including the following counties: Issaquena, Sharkey, Yazoo, Attala, Winston, Oktibbeha, Lownds.

Tennessee—entire State.

Virginia—counties of Wise, Lee, Scott, Russell, Washington, Dickinson, Grayson (except Fries), Smyth.

Kentucky—counties of Bell, Harland, Knox, Whitley (except Corbin), Ballard, Carlisle, Hickman, Fulton, McCracken, Graves, Livingston, Marshall, Calloway, Crittenden, Hopkins, Lyon, Trigg, Caldwell, Christian, Todd, Logan, Simpson.

Illinois—counties of Union, Alexander, Pulaski, Massac, Johnson, Pope, and Hardin.

Territory 5:

Arkansas—entire State.

Territory 6:

Oklahoma—entire State.

Territory 7:

Texas—entire State, except territory 8 and the following additional counties: El Paso, Hudspeth, Culberson, Jeff Davis, Presidio (except Marfa), Brewster (except Alpine) and Reeves.

Territory 8:

Texas south and including the following counties: Newton, Jasper, Tyler, Liberty, San Jacinto, Trinity, Houston, Leon, Milan (southern portion), Williamson, Lampasas (southern portion), San Saba (southern portion), Mason, Menard, Schleicher, Crockett, Pecos and Terrell; also the towns of Alpine and Marfa.

(*b*) To all customers in territory 1 prices are quoted and sales made on the basis of a price f. o. b. Chicago, Ill., with rail freight added to destination; to all customers in territories 2, 3, 4, 5, 6, 7, and 8 prices are quoted on a delivered basis to the customers' destination, with a different single delivered price quotation applicable throughout each such territory.

(*c*) Respondents, pursuant to the method set forth in (*a*) and (*b*) of (2) above in this paragraph 8, and illustrative thereof, made the following delivered price quotations applicable to the Territories described above per case of 2/5 gallon cans of refined corn oil during 1941 and 1942 and sold such oil in accordance therewith:

Territory	1:	$13.75	Plus freight from Chicago to destination.
"	2:	"	Delivered.
"	3:	14.05	"
"	4:	13.95	"
"	5:	14.05	"
"	6:	14.15	"
"	7:	14.20	"
"	8:	14.25	"

Systematic discriminations

PAR. 9. The factories at which corn derivatives are manufactured and from which they are shipped by the respondents to various consuming markets are located at widely separated points, within the States of New Jersey, Illinois, Missouri, Iowa, Indiana, and others, and by quoting and selling corn derivatives by the methods and means set out in paragraph 8 above, respondents systematically discriminate in net prices between and among their customers, by computing delivered price quotations on the basis of transportation charges not actually incurred.

PAR. 10. Each of the respondent manufacturers has contributed to the accomplishment and effectiveness of the acts, things and results alleged in the immediately preceding paragraphs 8 and 9 hereof through its—

1. Use of a method of computing, formulating and using delivered price quotations when other respondent members simultaneously do likewise and by which it is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondent manufacturers.

2. Discrimination between and among its customers through its demanding, charging, accepting and receiving higher net prices from its customers located near its plant than from its customers more distantly located for goods of like grade, quality and quantity, and thereby is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondent members.

Effects of systematic discriminations

PAR. 11. The inherent effects of the adoption and maintenance by the respondent manufacturers of the methods and practices described and alleged in paragraphs 8, 9 and 10 herein include, all and singularly, the following, to wit:

1. Substantial lessening of competition among respondent manufacturers.

2. Unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondent members, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents.

CONCLUSION

PAR. 12. The above alleged acts, practices, and methods of the respondents, all and singularly, have a dangerous tendency to, and do, restrain, hinder, suppress, and eliminate competition between and among respondents in the manufacture, sale, and distribution of corn derivatives in commerce within the meaning of the Federal Trade Commission Act, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

COUNT II

The charge under the Clayton Act

PARAGRAPH 1. Pursuant to the provisions of section 2 (a) of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission, having reason to believe that the parties named in the caption hereof, and more particularly described in paragraph 2 of count I hereof as respondents, have violated the provisions of said act of Congress as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in such respect as follows:

Description of respondents; definitions and explanations of terms; commerce and industry of respondents; background of practices in the industry

PARAGRAPHS 2 to 5, inclusive: As paragraphs 2 to 5, inclusive, of count II, the Commission incorporates paragraphs 2 to 5, inclusive, of count I of this complaint to precisely the same extent and effect as if each and all of them were set forth in full and repeated verbatim in this count II, except that the term "commerce" as hereinafter used means "commerce" as defined and set forth in the Clayton Act.

PAR. 6. Since June 19, 1936, and while engaged as aforesaid in commerce among and between the several States of the United States and the District of Columbia, each of the respondents, Corn Products, Staley, Clinton, Penick & Ford, American Maize, Anheuser-Busch, Hubinger, National, and Union, and their subsidiaries, has been, and is now, in the course of such commerce discriminating in price between purchasers of corn derivatives of like grade or quality sold for use, consumption or resale within the several States of the United States and the District of Columbia; and the effect of such discriminations has been to injure, destroy, and prevent competition between and among the respondents and between and among customers of the respondents and in the lines of commerce in which respondents and their customers are engaged.

PAR. 7. Each of the respondents quotes and sells corn derivatives on the basis of the prices, terms, and conditions more fully set forth in paragraphs 8 and 9 of count I hereof, and the Commission incorporates said paragraphs 8 and 9 of count I as a part of this paragraph 7 of count II to precisely the same extent and effect as if said paragraphs were set forth in full and repeated verbatim.

PAR. 8. In employing the zone and basing point methods of quoting and selling corn derivatives in commerce, as set forth in paragraph 7 of this count II above, each of the respondents systematically accepts and receives higher net prices, calculated at mill or shipping point, from some customers than from others for the purpose and with the effect of matching delivered price quotations between and among themselves.

PAR. 9. In employing the zone and basing point methods of quoting and selling corn derivatives in commerce, as set forth in paragraph 7 of this count II above, each of the respondents systematically accepts and receives higher prices from some customers than from others, depending on the location of such customers from the basing points and within the zones upon which delivered price quotations are cal-

culated; and each of the respondents adds arbitrary amounts to base prices in some cases, or deducts arbitrary amounts from base prices in other cases depending on the location of the customer from the basing points or within the zones. Such arbitrary additions and deductions have no relation, in many cases, to differences in the cost of transporting corn derivatives to the purchasers thereof, and are discriminations in price practiced by the respondents with the effect of eliminating competition between and among themselves.

Effects of respondents' discriminations

PAR. 10. The inherent and necessary effects of the discriminations practiced as aforesaid in paragraphs 6 to 9, inclusive, have been to injure, destroy, and prevent competition in the manufacture and sale of corn derivatives in commerce and to injure and suppress competition between and among the customers of the respondents from whom are exacted the higher prices and the arbitrary additions to price on account of location, and to:

(1) deprive customers of the respondents who are located, freightwise, at or near the factories and shipping points of the respondents of the benefit of their location, reflected in lower, competitive prices;

(2) deprive the public generally of the benefit of competition between and among the respondent producers of corn derivatives.

PAR. 11. The aforesaid acts of each of the said respondents constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on the 20th day of November 1950, become the decision of the Commission, except, however, that in conformity with the joint request of respondents and counsel supporting the complaint, the words "do or perform" shall be substituted for the words "engage in" appearing in Section I of the initial decision, and, accordingly, under the decision of the Commission, the preamble to the numbered subparagraphs set forth in Section I of the order to cease and desist shall read:

I. *It is ordered*, Under the authority vested in the Federal Trade Commission by the Federal Trade Commission Act, that the respondents, Corn Products Refining Co., a corporation; Corn Products Sales

Co., a corporation; Corn Products Sales Co., a Massachusetts trust; A. E. Staley Manufacturing Co., a corporation; Staley Sales Corp., a corporation; Clinton Foods, Inc., a corporation (formerly known as Clinton Industries, Inc.); Bliss Syrup & Preserving Co., a corporation; D. B. Scully Syrup Co., Inc., a corporation; Penick & Ford, Ltd., Inc., a corporation; American Maize-Products Co., a corporation; Anheuser-Busch, Inc., a corporation; Southern Syrup Co., Inc., a corporation; The Hubinger Co., a corporation; National Starch Products, Inc., a corporation; Union Starch & Refining Co., a corporation; and Union Sales Corp., a corporation, in or in connection with the offering for sale, sale and distribution of corn derivatives in commerce between and among the several States of the United States and in the District of Columbia, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

As a further part of the decision of the Commission, it is ordered that the respondents, Corn Products Refining Co., a corporation; Corn Products Sales Co., a corporation; Corn Products Sales Co., a Massachusetts trust; A. E. Staley Manufacturing Co., a corporation; Staley Sales Corp., a corporation; Clinton Foods, Inc., a corporation (formerly known as Clinton Industries, Inc.); Bliss Syrup & Preserving Co., a corporation; D. B. Scully Syrup Co., Inc., a corporation; Penick & Ford, Ltd., Inc., a corporation; American Maize-Products Co., a corporation; Anheuser-Busch, Inc., a corporation; Southern Syrup Co., Inc., a corporation; The Hubinger Co., a corporation; National Starch Products, Inc., a corporation; Union Starch & Refining Co., a corporation; and Union Sales Corp., a corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the provisions 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) the Federal Trade Commission on June 20, 1947,

issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act and with discriminations in price in violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended. After the filing of respondents' answer to the complaint, respondents initiated conferences contemplating settlement. As a result thereof all respondents agreed and consented to the entry of a cease and desist order in the form hereinafter set forth. Thereupon evidence was introduced and stipulations as to certain facts were made on the record before the above-named trial examiner theretofore duly designated by the Commission, and such evidence and stipulations were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the trial examiner on the complaint, answers, stipulations, evidence, proposed findings as to the facts and conclusions filed by counsel supporting the complaint (the filing of such proposals having been waived by counsel for respondents), and the proposed order to which respondents had consented; and the trial examiner, having duly considered the matter, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

Respondents

PARAGRAPH 1. (*a*) Respondent American Maize-Products Co. (hereinafter sometimes referred to as American Maize) is a corporation organized and existing under the laws of the State of Maine with its principal office and place of business at 100 East Forty-second Street in the city and State of New York. American Maize has for many years been and is now engaged in the business of manufacturing, distributing and selling a number of corn derivatives. For the manufacture of such products respondent American Maize owns and operates a corn refining plant located at Roby, Ind., which has a corn-grinding capacity in excess of 35,000 bushels per day with complete facilities for the manufacture of such products.

(*b*) Respondent Anheuser-Busch, Inc. (hereinafter sometimes referred to as Anheuser-Busch), is a corporation organized and existing under the laws of Missouri with its principal office and place of business at 7th and Pestalozzi Streets, St. Louis, Mo. For many years Anheuser-Busch has been and is now engaged in the business of manufacturing, distributing and selling a number of corn derivatives. For

the purpose of manufacturing such corn derivatives respondent owns and operates a corn refining plant at St. Louis, Mo., with grinding capacity in excess of 10,000 bushels per day and with facilities for the finished fabrication of such corn derivatives. Certain acts and practices as described herein by and in behalf of Anheuser-Busch have been conducted through and by its wholly owned and controlled subsidiary corporation Southern Syrup Co., Inc. (hereinafter referred to as Southern). Southern manufactured and sold certain corn derivatives at its plant located in New Orleans, La.

Respondents A. A. Busch & Co., Inc., and A. A. Busch & Co. of Massachusetts are not engaged in the manufacturing, distributing or selling of corn derivatives and have never been members of the Associations which are described below; the term "respondents" as used hereinafter shall not include these two respondents.

(*c*) Respondent Clinton Foods, Inc. (hereinafter sometimes referred to as Clinton), is a corporation organized and existing under the laws of the State of Delaware, having its principal office and place of business at 408 Pine Street, St. Louis, Mo. Clinton Foods, Inc., became the name of the corporation on November 14, 1949. Prior to that the corporation was known as Clinton Industries, Inc., organized on or about November 19, 1945, as a successor to the business of Clinton Co., an Iowa corporation, and National Candy Co., Inc., a New Jersey corporation. Certain of the acts and practices of Clinton as hereinafter described have been conducted through and by means of wholly owned and controlled subsidiary corporations including:

(1) Clinton Sales Co. (hereinafter sometimes referred to as Clinton Sales), a corporation organized under the laws of the State of Illinois with its principal office and place of business at 800 North Michigan Avenue, Chicago, Ill. Clinton Sales sold and distributed products manufactured by Clinton. Clinton Sales Co. was dissolved in January of 1950 and is no longer engaged in business.

(2) Bliss Syrup & Preserving Co. (hereinafter sometimes referred to as Bliss) which is a corporation organized and existing under the laws of the State of Missouri with its principal office and place of business at 1327 St. Louis Avenue, Kansas City, Mo. Respondent Bliss is engaged in the business of mixing, selling and distributing mixed corn syrup;

(3) D. B. Scully Syrup Co., Inc., (hereinafter sometimes referred to as Scully), which is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business at 321 Illinois Street, Chicago, Ill. Respondent Scully is engaged in the business of mixing, selling, and distributing mixed corn syrup.

For many years prior to its dissolution, Clinton Sales Co. had been, and Clinton, its predecessors, and its respondent subsidiaries, Bliss and Scully, are now engaged in the business of manufacturing, selling, and distributing a number of corn derivatives. They have a plant at Clinton, Iowa, which has a corn grinding capacity in excess of 32,000 bushels per day and complete facilities for the production of all known corn derivatives both for household and industrial use.

(*d*) Respondent Corn Products Refining Co. (hereinafter sometimes referred to as CPR) is a corporation organized in 1906 and existing under the laws of the State of New Jersey with its principal office and place of business at 17 Battery Place in the city and State of New York. CPR has an authorized capital stock of $100,000,000. CPR owns and operates plants at Pekin and Argo, Ill.; North Kansas City, Mo.; one recently erected at Corpus Christi, Tex.; a distributing plant and warehouse at Ridgefield, N. J.; and maintains approximately 400 distributing warehouse points throughout the several States of the United States. The Argo, Pekin, North Kansas City, and Corpus Christi plants have a corn grinding capacity in excess of 200,000 bushels per day, with complete facilities for the finished fabrication of all known corn derivatives, both for household and industrial use, and including well equipped carton and can plants and printing establishments for use in producing the many packaged products of the company. CPR's grind of corn approximates that of all of its competitors combined. Certain of its acts and practices described herein have been carried on through and by means of the following wholly owned and controlled subsidiary companies:

(1) Corn Products Sales Co., Inc., a corporation organized and existing under the laws of the State of New Jersey, having its headquarters at 17 Battery Place, in the city and State of New York, and

(2) Corn Products Sales Co., a Massachusetts trust, having its headquarters at 17 Battery Place, New York, N. Y.

These two wholly owned subsidiaries sell and distribute the corn derivatives manufactured by CPR. CPR, in addition to bulk products, produces, among others, the following branded products: Kingsford and Duryea Starches, Karo Syrup, Mazola Oil, Argo Corn Starch, and Linit Starch.

(*e*) Respondent The Hubinger Co. (hereinafter sometimes referred to as Hubinger) is a corporation organized and existing under the laws of the State of Iowa, with its principal office and manufacturing plant located at 1003 South Fifth Street, Keokuk, Iowa, and is successor to J. C. Hubinger Bros., which commenced the manufacture and sale of corn derivatives during or about the year 1903. For many

years Hubinger has been, and is now, engaged in the business of manufacturing, distributing, and selling a number of corn derivatives. For the manufacture of such products, respondent Hubinger owns and operates a corn refining plant at Keokuk, Iowa, which has a corn grinding capacity in excess of 12,000 bushels per day.

(*f*) Respondent National Starch Products, Inc. (sometimes hereinafter referred to as National) is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 270 Madison Avenue, in the city and State of New York. Respondent National was formerly known as National Adhesives Corp. In July 1939, it purchased certain of the assets of Piel Bros. Starch Co., an Indiana corporation, including the plant of manufacture located at Indianapolis, Ind., and which has a corn-grinding capacity of approximately 10,000 bushels per day. Since the purchase of such plant in July of 1939, respondent National has been and is now engaged in the business of manufacturing, distributing, and selling a number of corn derivatives.

(*g*) Respondent Penick & Ford, Ltd., Inc. (hereafter sometimes referred to as P & F) is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 420 Lexington Avenue, in the city and State of New York. Resepondent P & F is a corporation organized on or about February 7, 1920, which shortly thereafter acquired the assets of Penick & Ford, Ltd., a syrup-mixing concern organized in 1898 and of Douglas & Co., a manufacturer organized in 1903. P & F has since 1920 been and is now engaged in the business of manufacturing, distributing and selling a number of corn derivatives. For the manufacture of such products, P & F owns and operates a corn refining plant located at Cedar Rapids, Iowa, which has a corn-grinding capacity in excess of 34,000 bushels a day, with complete facilities for the manufacture of such products.

(*h*) Respondent A. E. Staley Manufacturing Co. (hereinafter sometimes referred to as Staley) is a corporation organized on November 9, 1906, and existing under the laws of the State of Delaware, with its principal office and place of business at 2200 East Eldorado Street, in the city of Decatur, in the State of Illinois. Certain of Staley's acts and practices described herein have been carried on through and by means of its wholly owned subsidiary, respondent Staley Sales Corp. (hereinafter sometimes referred to as Staley Sales), an Illinois corporation, with offices and principal place of business in Decatur, Ill. Respondent Staley owns and operates a corn refining plant at

Decatur, Ill., with a corn-grinding capacity of approximately 50,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use. Respondent Staley for many years has been and is now engaged in the business of manufacturing, distributing, and selling a number of corn derivatives. In addition, it manufactures branded corn products.

(*i*) Respondent Union Starch & Refining Co. (hereinafter sometimes referred to as Union) is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at 301 Washington Street, in the city of Columbus and State of Indiana. Certain of the practices by and on behalf of respondent Union as described herein have been conducted through and by means of its wholly owned subsidiary, respondent Union Sales Corp., which is an Indiana corporation, with its principal office and place of business at 301 Washington Street, Columbus, Ind. The products manufactured by Union are sold and distributed by Union Sales Corp. For many years, respondent Union has been and is now engaged in the business of distributing and selling a number of corn derivatives. For the purpose of refining corn in the manufacture of such corn derivatives, Union owns and operates a corn refining plant located at Granite City, Ill., which plant has a corn grinding capacity of approximately 15,000 bushels per day, with facilities for the finished fabrication of such corn derivatives. Respondent's plant at Edinburg, Ind., is not usable for and has not been used for refining corn since 1922.

Definition and explanation of terms

PAR. 2. (*a*) As they are used throughout these findings the words "corn derivatives" shall mean and include the products corn syrup unmixed, pearl starch, gloss starch, powdered starch, thin boiling starch, moulding starch, refined grits, dextrin, corn sugar, refined corn oil, crude corn oil, soapstock, and mixed corn syrup, but shall not include dextrose (refined corn sugar), Amioca (starch made from waxy maize), or adhesives produced from corn derivatives through the further process of cooking or gelatinizing, or any product of a different character resulting from the further processing of any of the foregoing products hereinabove defined as "corn derivatives."

(*b*) "Commerce" as used herein incorporates the definition of commerce as defined in the Federal Trade Commission Act and the Clayton Act.

Interstate commerce

PAR. 3. Each of the respondents named in paragraph 1 herein, either directly or indirectly through respondent subsidiary corporations, is engaged in the manufacture, processing, distribution or sale of various corn derivatives in commerce between and among the various States of the United States and the District of Columbia. Each of them manufactures or sells a number of "corn derivatives" as they are defined in paragraph 2 (*a*) herein. The acts and practices hereinafter described have all been carried on by or in behalf of respondents in furtherance of said manufacture, sale and distribution in commerce. Each of these respondents, in the course of such business, competes, except as hereinafter stated, with other corporations, partnerships, and individuals similarly engaged.

Description of the commerce and industry of respondents

PAR. 4. (*a*) Various of the "corn derivatives" as defined in paragraph 2 (a) are sold in bulk and in packaged form. Others are sold exclusively in bulk and still others exclusively in packaged form. Corn and its byproducts may be put to over 500 uses of which the corn wet milling industry produces ingredients for about 400, almost all of which are derived from the basic corn derivatives. Between and among them the respondents account for about 95 percent of the corn derivatives manufactured and sold in the United States. In the main, the production of the respondents is centered in a midwestern area located around and near Chicago, Illinois, and thus close to the most important corn belt area in the United States. The corn wet milling industry purchases approximately 25 percent of all corn reaching the big terminal markets.

(*b*) In the corn wet milling process the corn is first cleaned and then steeped in tanks of warm water to soften the kernel and loosen the hull. From the steeping tanks the kernels are degerminated and then washed in germ separators. Here the germs are skimmed off, treated, and the oil is pressed from the germ. It is at this stage in the process that corn oil is extracted from the kernel and upon further processing it becomes the finished product, either crude or refined corn oil. In the main process, the kernels are then finally ground and washed and the hulls separated from the starch and gluten by a series of revolving nylon tubes stretched over frames. This leaves only gluten and starch remaining of the original kernels. The mixture then is sent through long shallow troughs where the starch granules sink

to the bottom and the gluten flows off into settling tanks. The starch then passes through centrifugal machines to remove all traces of the gluten and it is then ready for drying, preparation for market as starch or conversion into dextrin, syrup, or sugar.

(*c*) Corn derivatives are important articles of commerce and are consumed in large quantities and in many varieties as food; as principal ingredients in manufacturing candy, jellies, preserves, baked goods, and many other food products. The industrial uses of corn derivatives are many and include, among others, home and commercial laundry preparations, soaps and cleaners, finishing textiles, dyes and explosives, and drugs.

Background of practices in the industry

PAR. 5. (*a*) In 1890 there were located in the United States approximately 23 companies engaged in the manufacture of starch and 7 companies in the manufacture of glucose. Thereafter, through means of a holding company, National Starch Manufacturing Co., a number of the small hitherto independent plants were associated together in an enterprise accounting for between 75 and 80 percent of the starch business. Similarly, in the manufacture of glucose, a new grouping was effected in Glucose Sugar Refining Co. of the principal part of the glucose industry. In 1902 the Corn Products Co., a predecessor of the respondent CPR, was organized and acquired the business of Glucose Sugar Refining Co. and National Starch Manufacturing Co. as well as several other starch and glucose producers which had not been subsidiaries of the above companies. Respondent CPR was organized in 1906 as a successor of Corn Products Co. and all of the other interests in the glucose field so that in 1906 it did 100 percent of the business in glucose and 64 percent of the business in starch, accounting for approximately 90 percent of the total production of corn derivatives.

(*b*) From 1903 to 1912 Piel Brothers Starch Co. (whose corn wet-milling plant respondent National purchased in July, 1939), Douglas & Co. (whose remaining assets respondent P & F purchased after an explosion which wrecked the plant in 1919), and respondents Union, Staley, Clinton, and American Maize entered the business and accounted, in 1913, for approximately 35 percent of the production of the industry. At the present time respondent CPR is the largest producer in the industry, accounting for approximately 50 percent of the total business and 90 percent of the business of the various packaged products.

(*c*) A suit in equity was brought by the United States under the Sherman Act in March, 1913, in the Federal District Court for the Southern District of New York against respondent CPR, Penick & Ford, Ltd. (to the syrup-mixing business of which respondent P & F is successor) and certain individuals which resulted in an interlocutory consent decree on May 14, 1915, effecting a sale of the stock interest in Penick & Ford, Ltd. held by CPR and forbidding each to acquire any interest or control in the other; and in the entry of a final decree March 31, 1919, by which respondent CPR was directed to dispose of certain of its properties.

(*d*) In December, 1925, manufacturing respondents herein, including the present respondents and the companies to whose interests said respondents have succeeded, except National, and others organized a trade association known as "Corn Derivatives Institute" for the purpose of promoting their mutual interests in the manufacture and sale in commerce of corn derivatives. A suit in equity was brought against Corn Derivatives Institute and its members, seeking relief under the then existing Anti-Trust laws and a consent decree was entered on April 6, 1932, in the District Court for the Northern District of Illinois, dissolving Corn Derivatives Institute.

Activities of the respondents generally

6. (*a*) Respondents American Maize, Anheuser-Busch, Clinton, CPR, Hubinger, National, P & F, Staley, and Union account for the principal part of the industry's production, and through them or their respondent subsidiaries as named in paragraph 1 herein, the major part of the industry's production is sold and distributed in the various States of the United States and the District of Columbia.

(*b*) Each of the corporate respondents has been a member at one time or another and has participated in and supported the activities of the following four voluntary, unincorporated trade associations:

(1) Corn Refiners Statistical Bureau (hereinafter sometimes referred to as the Bureau), organized March 4, 1932 and dissolved in September of 1946.

(2) Starch Manufacturers Association (sometimes hereinafter referred to as Starch Association), organized January 20, 1930, and dissolved in September of 1946.

(3) Corn Oil Producers Association (sometimes hereinafter referred to as the Oil Association), organized December 9, 1930, and dissolved in September of 1946.

(4) Syrup Mixers' Society (sometimes hereinafter referred to as the Society), organized February 10, 1928, and dissolved in September of 1946.

except that Anheuser-Busch and Union have not been members of the Starch Association. Respondent National has participated in and supported the activities of the Bureau and the Starch Association, both of which it became a member of in 1939; National resigned from the Starch Association in 1943 and has never been a member of Oil Association, or the Society. Respondents Bliss and Scully have participated in, been members of and supported the activities of only the Society. Oscar L. Moore assisted in the organization of the four above-named associations, acted as Secretary to each of them, directed their affairs and presided at the respective meetings of their members, from their organization through their dissolution in September of 1946. Through common membership and headquarters at 209 La Salle Street, Chicago, Ill., by the respondents and common secretaryship of Oscar L. Moore, the four above-named associations were operated as a single enterprise, and the Oil Association, the Starch Association, and the Society have been in effect simply divisions of the Bureau.

The said Bureau, Starch Association, Oil Association, and Society were dissolved in September 1946 as heretofore shown and, therefore, so far as the record shows, following that date there was no further activity through the said associations or connection between said industry with the said Oscar L. Moore.

However, the existence of Oscar L. Moore's office as headquarters for trade associations in other industries has continued and the files of the four associations have been kept in storage up to the closing of the record in this case.

These facts, as well as the history of this industry, permit the conclusion that there is a sufficient probability of resumption of the activities carried on by and through the said four associations that the public interest requires that such activities must be expressly forbidden by an order in this proceeding.

Activities of the Bureau and its members

PAR. 7. A constitution, bylaws, and reporting plan were adopted and amended from time to time and these governed the activities of the Bureau. Matters relating to bulk corn derivatives including corn syrup unmixed, cornstarch and corn sugar, but excepting corn oil, were subject to the activities of the Bureau.

PAR. 8. The Bureau was used by the respondent members as a means of exchanging information regarding the following:

prices; terms of sale; discounts; allowances for return of containers or unused corn derivatives; differentials for warehouse, tank car or other means of delivery to customers; charges for installation of pumping and other service facilities and for performing service functions for customers; terms and conditions for guarantee against price declines on orders of corn derivatives; terms and conditions governing the booking of orders for future delivery of corn derivatives; the lengths of time and prices at which such orders might be booked; and other factors affecting the marketing of corn syrup unmixed, bulk starch, corn sugar, and refined grits.

Each of the participating respondents reported to the Bureau, at the end of each day, transactions in such products, including in the report complete details as to prices, terms and conditions of sale, such as, but not limited to:

the grade and quality of the product; type of container or package; the point of delivery; and the delivered price.

These reports were compiled and tabulated by the secretary, Oscar L. Moore, and these compilations, showing such information for the entire industry, and frequently showing such information for the individual members, were transmitted by the Bureau by mail to each of the participating respondents within 24 hours of receipt of said reports. Monthly statistical reports were compiled and published by the Bureau from information furnished by the corporate respondents showing separately for each respondent:

production and distribution by consuming trades of certain corn derivatives; stocks on hand; amount of corn ground by various respondents and other matters.

Daily reports of sales were disseminated only to the participating members; monthly statistical reports were furnished to the said members and certain of them upon request to government agencies.

PAR. 9. Printed forms were distributed by the Bureau to the members for the purpose of making inquiry of the Secretary as to the correctness of reported transactions, or as to the absence of a report of a transaction about which information had been secured through livered price or an advantage to a buyer over the prices or terms of condition of sale, allowance, or discount which varied from those theretofore reported by another member, inquiry might have been made and was made to the Secretary for details of the transaction. Upon re-

ceipt of such an inquiry, the Secretary informed the member who participated in the transaction and asked whether such transaction was correctly reported or if in fact it had occurred. This member conveyed an explanation to the Secretary and this was in turn reported to the inquiring member.

PAR. 10. Members of the Bureau met monthly and upon call of the Secretary at other times and discussed in detail factors affecting the marketing of corn derivatives. At each meeting a portion of time was set aside for the questioning of representatives of members present as to transactions which had been reported in daily price reports in the trade. Discussions followed concerning the explanations which had been given for such questioned transactions. Representatives of members often stated that a factor which resulted in a lowered delivered price or an advantage to a buyor over the prices or terms of other members had been used by mistake. Reporting of the details of transactions and discussions thereof by representatives of members at meetings was often carried out in such manner as to disclose to each member present the intimate details of the questioned member's business, including the names and locations of some customers of the member, together with the specific prices, terms, and conditions of sale used in selling to such customers. Representatives of members discussed and considered together at Bureau meetings, in price inquiries as described in paragraph 9 above and otherwise through the Bureau, various factors as to such transactions influencing price, including:

protection of customers against price declines; refusal to sell f. o. b. production point; diversion of syrup from one destination to another for the purpose of obtaining a lower delivered price; allowances for return of containers or unused corn derivatives; differentials for warehouse, tank car, or other means of delivery to customers; charges for installation of pumping and other service facilities and for performing service functions for customers; terms and conditions governing the booking of orders for future delivery of corn derivatives, and the lengths of time and prices at which such orders might be booked; and freight rates and charges applicable to delivered prices.

Documents appearing in the files of individual respondents indicate that many of the discussions and joint considerations mentioned above which occurred at Bureau meetings were not referred to nor set forth in the minutes of such meetings prepared by the Secretary.

PAR. 11. The acts, practices, and procedures outlined above indicate that the Bureau was used as a medium or central agency for exchanging or relaying information as to the quotations, prices, terms, and

conditions of sale of each member, as to intimate details of each member's business and as a vehicle by which prices were made uniform, and deviations from such uniformity could be and were effectively detected and met. Each of the respondents directly or through its representatives did not participate in each of the discussions and joint considerations described above, but each respondent, either directly or through a representative or subsidiary, participated in a number of such discussions, joint considerations, acts and practices there described and, with respect to those in which it did not participate it generally had knowledge of the participation of the other respondents. The record does not disclose that such activities continued subsequent to the dissolution of the Bureau in September 1946, but until shortly prior thereto each respondent, having knowledge of the acts and practices above set forth, failed to disassociate himself from the Bureau and thereby participated with the others in collectively affecting prices, terms, and conditions of sale, except for the actions of Staley as hereinafter described.

Staley participated fully in the activities of the Bureau, the Starch Association, the Oil Association, and the Society until September 1945, when it ceased attending meetings and until January 1946, when it ceased participating in the reporting activities and in the inquiry system. However, Staley continued its membership in the four Associations until their dissolution.

Activities of the Starch Association and its members

PAR. 12. A constitution, bylaws, and reporting plan were adopted and amended from time to time and these governed the activities of the Starch Association. Matters relating to packaged starch, both corn and gloss, were subject to the activities of the Starch Association.

PAR. 13. The Starch Association had the same objectives as and has operated with respect to packaged corn and gloss starch exactly as described in paragraphs 8 through 11 above for the Bureau, with the following minor differences:

(*a*) The daily reports to the Starch Association included the zone and territory in which the buyer was located, the type of package, whether a factory or private brand, the delivered price, f. o. b. point, trade discounts, free deals and allowances, and, when zone areas were changed, zone maps showing the new zones.

(*b*) Reported variations from previously reported sales included: Trade discounts; invoice terms; price guarantees; length of time and price at which bookings had been made; location of buyers to

whom free goods had been allowed and amount of free goods; advertising allowances; specialty work through jobbers; label allowances; drop shipments; floor-stock guarantees; private brand carton and label allowances; customers' consignments; ex-warehouse charges; pool-car charges; cartage charges and free allowances.

(*c*) Periodic statistical reports were compiled and published quarterly rather than monthly, and were not requested by Government agencies.

(*d*) The subjects discussed and jointly considered at Starch Association meetings, in price inquiries and otherwise through the Starch Association included:

(1) Freight rates used in calculating delivered prices;

(2) The territorial limits of zones to which delivered prices applied and differentials in delivered price between zones;

(3) Trade and cash discounts, invoice terms, and the terms of close-outs of old stock;

(4) Consignment of goods;

(5) Ex-warehouse charges, pool-car charges, cartage charges, and freight allowances;

(6) Specialty work through jobbers;

(7) Price guarantees and floor-stock guarantees;

(8) Length of time and prices at which bookings were made;

(9) Advertising and promotional allowances;

(10) Freight goods allowances and drop shipments;

(11) Label allowances;

(12) Private brand allowances;

(13) Charges on account of differing containers.

(*e*) P & F participated fully in the activities of the Starch Association, except that the record does not show it participated in the reporting or statistical activities or that it used the inquiry system.

(*f*) When one respondent submitted to the Starch Association under the reporting plan a change in the zone territories, such changes were distributed in map form by the Association, and thereafter the other members by their reports to the Starch Association indicated their adoption of such maps for use in their own pricing.

Activities of the Society and its members

PAR. 14. A constitution, bylaws and reporting plan were adopted and amended from time to time and these governed the activities of the general, eastern, and southern divisions of the Society.

Matters relating to mixed corn syrup were subject to the activities of the Divisions of the Society.

PAR. 15. The Society had the same objectives as and has operated with respect to mixed corn syrup exactly as described in paragraphs 8 through 11 above for the Bureau, with the following minor differences:

(*a*) The eastern division reported complete transactions weekly rather than daily.

(*b*) The reports to the Society included the delivered price, the geographical zone in which the buyer was located, the type of product, the brand or label, the size of container, the f. o. b. point and terms of sale.

(*c*) Reported variations from previously reported sales included: Territories in which sales were completed at a base price plus freight; territorial zones in which sales were completed at delivered prices; quantity discounts; trade discounts; cash discounts; invoice terms; price guarantees; length of time and prices at which bookings were made; full details of free goods deals, including location of buyers to whom made; full details of advertising allowances, including markets in which made; specialty work on factory brands and jobbers' brands and label allowances.

(*d*) The subjects discussed and jointly considered at Society meetings, in price inquiries and otherwise through the Society included:

(1) Freight rates and charges added to base prices in calculating delivered prices;

(2) Basing points used in calculating delivered prices;

(3) The territorial limits of zones and differentials in delivered prices between zones;

(4) Trade discounts, cash discounts, terms and quantity discounts;

(5) Consignment sales;

(6) Warehouse, tank car and other delivery prices, including cartage and freight allowances;

(7) Specialty work on factory and jobbers' brands;

(8) Price guarantees;

(9) Length of time and prices at which bookings might be made;

(10) Advertising and promotional allowances;

(11) Charges for drop shipments;

(12) Label allowances;

(13) Differentials between factory and private brands;

(14) Allowance for different types of containers.

Activities of the Oil Association and its members

PAR. 16. A constitution, bylaws and reporting plan were adopted and amended from time to time and these governed the activities of the Oil Association. Matters relating to corn oil, both packaged and in bulk, were subject to the activities of the Oil Association.

PAR. 17. The Oil Association had the same objectives as and has operated with respect to corn oil, both packaged and in bulk, exactly as described in paragraphs 8 through 11 above for the Bureau, with the following minor differences:

(*a*) The daily reports of tank car sales both to and from the Oil Association were reported by telegraph as well as by mail. The record indicates that respondents considered the prompt reporting by telegraph to be important.

(*b*) The daily reports to the Oil Association included:

A description of the product; type of package; quantity; delivery and transportation terms; delivered price; quantity discounts; trade discounts; cash discounts; price guarantees; invoice terms; and market territory in which the buyer was located.

(*c*) Reported variations from previously reported sales included:

Quantity discounts; trade discounts; cash discounts; invoice terms; price guarantees; length of time and prices at which bookings were made; ex-warehouse charges; freight allowances; direct sales; private label discounts; free goods; terms of special deals; and label allowances.

(*d*) No periodic statistical reports were compiled.

(*e*) The subjects discussed and jointly considered at Oil Association meetings, in price inquiries and otherwise through the Oil Association included:

(1) Basing points from which delivered prices were calculated and freight rates and charges;

(2) Zone boundaries and differentials;

(3) Trade discounts, cash discounts, invoice terms and quantity discounts;

(4) Provision for warehouse, tank car and other delivery;

(5) Price guarantees;

(6) Prices and terms at which bookings were made;

(7) Container differentials.

Pricing methods used by respondents for quoting and charging in the sale and distribution of corn derivatives in interstate commerce

PAR. 18. For most of the period covered by the complaint herein, respondents have utilized pricing policies, methods and practices more fully set forth and described below:

(*a*) All respondents sold corn derivatives on one of three bases: f. o. b. mill; or delivered at destination; or f. o. b. mill in sales to buyers at some locations and delivered to buyers at other destination.

(*b*) In so selling corn derivatives, each of respondents used one of four geographical pricing systems. Each respondent used the same system on the same corn derivative in the same container, as did all other respondents. The four systems thus used by respondents were the single-basing point system, the multiple-basing point system with every plant a basing point, the zone system and a combination system: (1) a single-basing point system in areas located nearer the single basing point and (2) a zone system in areas more distantly located.

(*c*) Every respondent generally on some corn derivatives and in numerous instances on other corn derivatives provided for sales by that respondent f. o. b. each plant of that respondent, and the prices at which sales were made on goods of like grade and quality to different competing customers by the respondent f. o. b. plant varied by virtue of the use of one of the said four geographical pricing systems. An example of differences in such f. o. b. plant prices resulting from use of a single-basing point system is shown by the following tabulation relating to pearl starch:

Comparison of equivalent carload prices and freight rates covering January 1942 sales by respondents of pearl starch in 100- and 140-pound bags to buyers located at selected destinations

Company	Plant location	Atlanta	Baltimore	Chicago	Dallas	Decatur	Denver	Detroit	Indianapolis	Jacksonville	Kansas City	Louisville	Nashville	New Orleans	Pittsburgh	Providence	St. Louis	San Francisco
Equivalent carload prices per cwt. derived from company data, base price f. o. b. Chicago plus freight to destination																		
American Maize	Roby, Ind.			$3.10					$3.27			$3.32						
Anheuser-Busch	St. Louis, Mo.			3.10														
Clinton Industries	Clinton, Iowa																	
Corn Prod. Rfg. Co.	Argo, Ill.		$3.42	3.10					3.27							$3.47		
Do.	Pekin, Ill.	$3.60								$3.73	$3.40						$3.27	
Hubinger Co.	Keokuk, Iowa	3.60		3.10								3.32				3.47		
Penick & Ford	Cedar Rapids, Iowa	3.60		3.10			$3.77					3.32	$3.47				3.27	
A. E. Staley Mfg. Co.	Decatur, Ill.	3.60		3.10	$3.73	$3.27		$3.27	3.27					$3.40		3.47		
National Starch	Indianapolis, Ind.								3.27						$3.39			$4.04
Equivalent carload cost per cwt. to buyer at destination as shown by Corn Refiners Statistical Bureau																		
American Maize	Roby, Ind.																	
Anheuser-Busch	St. Louis, Mo.			$3.10					$3.27								$3.27	
Clinton Industries	Clinton, Iowa			3.10				$3.27					$3.47			$3.47		
Corn Prod. Rfg. Co.	Argo & Pekin, Ill.			3.10													3.27	
Hubinger Co.	Keokuk, Iowa	$3.60		3.10				3.27				$3.32				3.47		
Penick & Ford	Cedar Rapids, Iowa		$3.42	3.10								3.32				3.47	3.27	
A. E. Staley Mfg. Co.	Decatur, Ill.	3.60	3.42	3.10					3.27		$3.40			$3.40		3.47	3.27	
National Starch	Indianapolis, Ind.																	
Minimum carload freight rates per cwt. from producing plants to destination per Central Traffic Service Dept. of U. S. Treasury																		
American Maize	Roby, Ind.			$0.04					$0.17			$0.22						
Anheuser-Busch	St. Louis, Mo.			.17					.17									
Clinton Industries	Clinton, Iowa			.16				$0.30					$0.39			$0.42½		
Corn Prod. Rfg. Co.	Argo, Ill.		$0.32	.04					.17							.37		
Do.	Pekin, Ill.	$0.49								$0.62	$0.26						$0.13	
Hubinger Co.	Keokuk, Iowa	.51		.18				.24				.28				.44		
Penick & Ford	Cedar Rapids, Iowa	.58	.35½	.24			$0.60					.23	.41			.41½	.25	
A. E. Staley Co.	Decatur, Ill.	.46	.35½	.14	$0.58			.22	.15		.26			$0.30		.41	.13	
National Starch	Indianapolis, Ind.														$0.24			$1.02
Corresponding freight applicator per cwt. uniformly included in computing quotations by all respondents—Chicago rate to destination		$0.50	$0.32		$0.63	$0.17	$0.67	$0.17	$0.17	$0.63	$0.30	$0.22	$0.37	$0.30	$0.29	$0.37	$0.17	$0.94

The preceding table is summarized by the following tabulation:

Pearl starch prices during January 1942

Basis.—Chicago Base Price of $3.10 per cwt. plus freight from Chicago to respective destinations.

Destinations	Base price per cwt.	Delivered prices per cwt.	Freight per cwt. involved in sales by the different respondents	
			Charged	Incurred
Atlanta, Ga	$3.10	$3.60	50¢	46 to 58¢
Baltimore, Md	3.10	3.42	32	32 to 36
Chicago, Ill	3.10	3.10	None	4 to 24
Dallas, Tex	3.10	3.73	63	58
Decatur, Ill	3.10	3.27	17	None
Denver, Colo	3.10	3.77	67	60
Detroit, Mich	3.10	3.27	17	22 to 30
Indianapolis, Ind	3.10	3.27	17	0 to 17
Jacksonville, Fla	3.10	3.73	63	62
Kansas City, Mo	3.10	3.40	30	26
Louisville, Ky	3.10	3.32	22	22 to 28
Nashville, Tenn	3.10	3.47	37	41
New Orleans, La	3.10	3.40	30	30
Pittsburgh, Pa	3.10	3.39	29	
Providence, R. I	3.10	3.47	37	24
St. Louis, Mo	3.10	3.27	17	37 to 44
San Francisco, Calif	3.10	4.04	94	0 to 25
				$1.02

Other examples with respect to differences in price f. o. b. plant at which each of the following specified respondents sold another corn derivative, Corn Syrup-Unmixed or "Glucose," at an earlier period under a single basing point system are given in detail as set forth below. These facts relate to and show the methods used by the specified respondents in the sale of Corn Syrup-Unmixed at or about the closing of the record in the respective cases, below cited. The cases are:

In the matter of *Corn Products Refining Co.* and *Corn Products Sales Co., Inc.*, 34 F. T. C. 850 (March 16, 1942). The following facts were as there stated:

Par. 4 (*a*) Respondents began the distribution of glucose or corn syrup from their Argo plant, which is within the railroad switching district of Chicago, Ill., in 1910 and from their Kansas City plant in 1922. This product is sold by respondents largely to candy manufacturers in railroad tank car lots of approximately 95,000 pounds each, in tank wagon or truck lots of approximately 12,000 pounds each, and in drums, barrels, half barrels, 10-gallon kegs, and 5-gallon kegs. Respondents have concurrently sold glucose of like grade and quality to different purchasers at differing prices. Since June 19, 1936, and for many years prior thereto, respondents have sold bulk glucose to purchasers throughout the United States at delivered prices which were, and are calculated upon the basis of the price in Chicago plus the railroad tariff rate from Chicago to the destination of the purchaser. Additional price differences among purchasers of glucose

have been, and are, created by respondents through their practice of adding to the railroad tank car price additional sums, the amounts of such additions depending upon the type of container in which the glucose is delivered. Respondents have created other price differentials among purchasers through preferential application to some purchasers of their practice of allowing customers a period of days after a price increase has been announced within which such customers may purchase an amount of glucose at the price in effect before the announcement of the increase. This is known as the order "booking" system.

(*b*) Respondents have been, and are now, selling and shipping glucose or corn syrup, unmixed, of like grade and quality from their plants in Chicago, Ill., and Kansas City, Mo., to purchasers throughout the United States, some of which purchasers are located in the following cities: Chicago, Ill.; Kansas City, St. Joseph, and Springfield, Mo.; Fort Smith, Ark.; Hutchinson, Kans.; Lincoln, Nebr.; Sioux City, Iowa; Waco, Sherman, and San Antonio, Tex.; Denver, Colo.; and Salt Lake City, Utah. Sales to purchasers, including those in the cities named, are fulfilled by shipments of glucose from respondents' plant at Chicago, Ill., or from their plant at Kansas City, Mo.; depending in each instance upon the judgment of and subject to the entire control of respondents. With the exception of a few sales, shipments to fulfill which were made from respondents' plant at Chicago, Ill., sales to purchasers located in all of the cities named above except Chicago (which cities are used for the purpose of illustrating respondents' selling and delivery practices) were fulfilled by shipments from respondents' plant at Kansas City, Mo.; a substantial number of the sales to purchasers in Chicago were fulfilled by deliveries from respondents' filling station in Chicago to which glucose had been shipped by respondents from their plants in Kansas City and Chicago; and a few such sales were fulfilled by shipments directly to customers in Chicago from respondents' plant in Kansas City. Many purchasers who bought glucose from respondents also purchased glucose from competitors of respondents. To illustrate the differing prices at which glucose was sold by respondents on particular dates, the following tabulation shows the prices per hundred pounds to purchasers in the cities named above for 43° Baume glucose in tank car lots on the dates stated:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$2.94	$3.04	$2.29	$2.09
Kansas City, Mo	3.32	3.40	2.69	2.49
St. Joseph, Mo	3.32	3.40	2.69	2.49
Springfield, Mo	3.32	3.40	2.69	2.49
Fort Smith, Ark	3.58	3.64	2.94	2.74
Hutchinson, Kans	3.53	3.60	2.90	2.70
Lincoln, Nebr	3.37	3.45	2.74	2.54
Sioux City, Iowa	3.32	3.40	2.69	2.49
Waco, Tex	3.77	3.82	3.14	2.94
Sherman, Tex	3.68	3.74	3.06	2.86
San Antonio, Tex	3.74	3.84	3.17	2.97
Denver, Colo	3.79	3.64	2.95	2.75
Salt Lake City, Utah	3.79	3.74	3.06	2.86

At all times between the dates set forth substantially the same differences in and relations between and among said prices illustrated above existed as to purchasers so located, and these prices were charged and paid by such purchasers regardless of whether the glucose or corn syrup unmixed was shipped to such purchasers in the city named from respondents' plant at Chicago, Ill., or respondents' plant at Kansas City, Mo.

(c) The illustrative prices set forth above were determined by respondents by following their general practice of adding to the prices shown for Chicago on the dates set forth, respectively, the then effective railroad traffic rate from Chicago to destination without reference to whether the sale would be fulfilled by shipment from Kansas City or from Chicago. Such rates in cents per hundred pounds, together with similar rates from Kansas City to the same destinations, were as follows:

Cents per hundred pounds

	Aug. 1, 1936		Aug. 1, 1937		Aug. 1, 1938		Aug. 1, 1939	
	Chicago	Kansas City	Chicago	Kansas City	Chicago	Kansas City	Chicago	Kansas City
Chicago, Ill	0	38	0	36	0	40	0	40
Kansas City, Mo	38	0	36	0	40	0	40	0
St. Joseph, Mo	38	8	36	8	40	9	40	9
Springfield, Mo	38	35	36	33	40	36	40	36
Fort Smith, Ark	64	42	60	40	65	45	65	45
Hutchinson, Kans	59	35	56	33	61	36	61	36
Lincoln, Nebr	43	12	41	12	45	13	45	13
Sioux City, Iowa	38	23	36	22	40	24	40	24
Waco, Tex	83	62	78	58	85	63	85	63
Sherman, Tex	74	52	70	49	77	54	77	54
San Antonio, Tex	85	67	80	63	88	69	88	69
Denver, Colo	85	68	60	51	66	56	66	56
Salt Lake City, Utah	85	82	70	61	77	67	77	67

(d) Insofar as sales which are fulfilled by shipments from respondents' Chicago plant are concerned, although the differential in price to purchasers at various locations may not be precisely justified by the cost to respondents of delivery, because of milling in transit rates and other freight rate adjustments, it does not appear that there is substantial unjustified discrimination under the pricing plan set forth above. It is plain, however, that a purchaser located in Kansas City who received delivery from respondent's Kansas City plant on the dates set out above paid respondents prices higher than the prices to a customer in Chicago by approximately the following percentages: August 1, 1936, 13 percent; August 1, 1937, 12 percent; August 1, 1938, 17 percent; August 1, 1939, 19 percent. The percentages vary with variations in the Chicago price as well as with rate changes. These higher prices were in no way warranted by additional delivery costs. Any purchaser who is located closer freightwise to Kansas City than to Chicago, Ill., and who received delivery from Kansas City, was forced to pay a price which included delivery costs not incurred or paid by respondents. For example, the price to a purchaser in Waco, Tex., for such delivery included "phantom" freight delivery costs which made the price to him approximately 10 percent higher than to a Chicago purchaser. It is also plain that a purchaser in Chicago who received delivery from Kansas City purchased at a price which not only did not include any artificial freight, but which did not take into account the freight actually incurred and paid by respondents. Similarly, any purchaser located closer freightwise to Chicago than to Kansas City, and who received delivery from respondents' Kansas City plant, received a price which not only did not include any artificial freight but which did not include all the freight actually paid by respondents.

(*c*) Respondents did not attempt to show that the price differences illustrated in the first table in this paragraph made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such corn syrup was to such purchasers sold or delivered.

PAR. 5. (*a*) In addition to the price differences as among customers of respondents which are created by the pricing system illustrated in the preceding paragraph, respondents have sold, and are now selling, glucose or corn syrup unmixed to different purchasers, wherever located, in containers of different sizes at prices per hundredweight in addition to the tank car price as follows:

Type of container:	*Additional price per hundredweight over tank car prices*	
Barrels	$0.33	
Half barrels	$0.58	
10-gallon kegs	$0.98	
5-gallon kegs	$1.08	
Returnable steel drums	$0.13	where there is no return freight paid on empty drums.
Do	$0.18	where the return freight on the empty drum is between 50 and 75 cents per hundredweight.
Do	$0.23	where the return freight on the empty drum is between 76 and 90 cents per hundredweight.
Do	$0.28	where the return freight on the empty drum is between 91 cents and $1 per hundredweight.
Do	$0.33	where the return freight on the empty drum is more than $1 per hundredweight.
Tank trucks	$0.10	where delivered by respondents' equipment.
Do	$0.02	where delivered by customer's equipment.

(*b*) Respondent made no effort to show that the price differences among their customers created by the aforesaid container differentials were price differences which made only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities were to such purchasers sold or delivered.

* * * * * * *

PAR. 7 (*a*) Many of those who purchase glucose or corn syrup of like grade and quality from the respondents pursuant to the aforesaid pricing plan, container differentials, and booking practices are candy manufacturers located in various States of the United States and are competitively engaged among themselves and with others in the sale of candy to various customers, including wholesalers, chain stores, and retailers located in the various States of the United States. The glucose so purchased is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy, constituting from about 5 to approximately 90 percent of the finished weight thereof. Generally, glucose is used in greatest proportion in candies which are sold by such manufacturers

at prices of a few cents a pound and at narrow margins of profit. The higher prices paid for glucose purchased from respondents by candy manufacturers located in cities other than Chicago, Ill., result to a greater or lesser degree in higher material costs to them than to manufacturers in Chicago who purchase from respondents, the degree in each instance depending upon the difference in price and the proportion of glucose in the particular candy manufactured. Some of such candy manufacturers who were located in cities other than Chicago before the construction and operation of respondents' plant in Kansas City, and some candy manufacturers formerly located in such cities, have since 1922 relocated in Chicago. Those manufacturers who have purchased, and purchase, glucose from respondents in quantities smaller than a tank car and are charged prices established pursuant to the aforesaid container differentials have higher material costs for glucose than do those candy manufacturers who purchase from respondents in tank car quantities. Those manufacturers who purchase glucose from respondents and do not receive a preferential treatment under the booking practices of respondents also have higher material costs for glucose than do those manufacturers who purchase from respondents and receive such preferential treatment.

(*b*) As to candies priced at but a few cents a pound and bearing no differentiating name or brand, candy manufacturers may attract customers by selling such candies at only a small fraction of a cent per pound lower than a competitor's price. This is especially true in selling such candies to chain stores and other purchasers of large quantities of candy to whom a small difference is determinative in the placing of their business. Under such circumstances candy manufacturers paying higher prices for glucose than competitors may attempt to recover such increased costs by increasing the price of such candy, or may make only selected sales on a nonprice or other basis. The result in either case is to reduce profit. This result may occur either directly through the absorption by the manufacturer of higher syrup costs in the sale of candies at competitive prices or indirectly through a reduced volume of sales, or the result may be to diminish the ability of those paying the higher prices to compete with those paying the lower prices. These results may be avoided or augmented by differences in the costs to such candy manufacturers of other factors, such as labor, taxes, rents, insurance, other ingredients, proximity to markets, and delivery of the finished candies, no matter how such differences are brought about.

In the matter of *Penick and Ford, Ltd., Inc.*, 31 FTC 1494 (November 29, 1940). The following facts were as there stated:

PAR. 3. For many years respondent has been, and is now, manufacturing such glucose of corn syrup unmixed at said plant, and has sold and shipped and does now sell and ship such glucose or corn syrup unmixed in commerce between and among the various States of the United States from the State in which its said factory is located across State lines to purchasers thereof located in States other than the State of manufacture, in competition with other corporations engaged in similar lines of commerce.

PAR. 4. Most of such purchasers so located purchase such syrup which is of like grade and quality for use in the manufacture of candy. Such purchasers are competitively engaged in the sale of such candy to various customers in-

cluding chain stores, wholesalers, and retailers, all located in the several States of the United States and in the District of Columbia.

PAR. 5. At all times since June 19, 1936, respondent has sold such syrup at higher delivered prices per hundred pounds to purchasers located in certain cities other than Chicago, Ill., than it has sold such syrup to purchasers located in Chicago, Ill.

The prices at which such syrup was sold by respondent to purchasers located in cities other than Chicago, Ill., were not uniformly higher than the prices at which such syrup was concurrently sold to purchasers located in Chicago, Ill., but such higher prices varied with the geographical location of the cities in which such purchasers were located.

Thus, on the following dates, respondent sold such syrup to such purchasers located respectively in each of the following cities at the delivered prices per hundred pounds which are shown opposite said cities for such syrup (43° Baume):

Location of purchasers	June 23, 1936	June 23, 1937	June 23, 1938	June 23, 1939
Chicago, Ill.	$2.44	$3.59	$2.29	$2.24
Ottumwa, Iowa	2.73	3.86	2.59	2.54
Sioux City, Iowa	2.82	3.95	2.69	2.64
St. Louis, Mo.	2.61	3.75	2.47	2.42
Springfield, Mo.	2.82	3.95	2.69	2.64
Lincoln, Nebr.	2.87	4.00	2.74	2.69
Hutchinson, Kans.	3.03	4.15	2.90	2.85
Denver, Colo.	3.29	4.19	2.95	2.90
San Antonio, Tex.	3.29	4.39	3.17	3.12
Paris, Tex.	3.15	4.26	3.02	2.97

At all times between the dates above set forth, substantially the same differences in and relationship between and among said prices above illustrated have existed as to such purchasers so located.

PAR. 6. By selling such syrup at said different prices as found in paragraph 5 above, the differences between which prices have not been justified by respondent and which differences make more than due allowance for differences in the cost of delivery, it has discriminated in price between such purchasers who have paid the various different prices for such syrup.

PAR. 7. Such syrup is one of the major raw materials used in the production of many kinds of candy manufactured by each of such candy manufacturers, accounting for as much as 90 percent or more of the weight of some varieties and for a substantial part of the total cost of manufacturing such candies; and said discriminations in the price of such syrup increase the costs of the unfavored purchaser over the costs of the favored purchasers directly as the amount of the discrimination between them and as the syrup content of the candy increases. By reason of such higher costs, the profits of the unfavored purchasers would be substantially lower than they would be if it were not for the discriminations.

Such effect on profits would result where unfavored purchasers sold candy manufactured by them at prices competitive with the prices of candy manufactured by the favored purchasers. Under such circumstances the volume of sales by the unfavored purchasers would not be affected, but, due to their absorption of the higher syrup costs, their respective margins of profit, as well as total profits, would be reduced below what they would be if it were not for the discrimination.

Similarly, where, in an effort to recover such higher syrup costs, unfavored purchasers sold such candy at prices higher than those charged by favored purchasers, their respective volume of sales would undoubtedly decline commensurate in some degree to the amount by which prices were increased. With such decline in volume of sales would come unused plant capacity and increased per unit overhead costs; and the price of the candy would have to be increased sufficiently, therefore, to cover both the higher syrup costs and higher overhead costs, if the margin of profit available in the absence of discrimination was to be preserved. Even though such margin of profit was not impaired it would not be realized on the lost sales, and total profit would be diminished to the extent that volume of sales was reduced.

The loss of profits either by absorption of the higher syrup costs or from loss of sales resulting from increasing prices to recover such higher syrup costs would generally diminish the ability of those candy manufacturers paying the higher prices for such syrup to compete in the sale of their products with candy manufacturers paying the lower prices for such syrup.

In the Matter of *Anheuser-Busch, Inc.*, 31 FTC 986 (September 25, 1940). The following facts were as there stated:

PAR. 4. For many years in the course and conduct of its business respondent has sold and shipped and does now sell and ship such syrup in commerce between and among the several States of the United States, causing such syrup to be sold and shipped from its said plant in St. Louis, Mo., across State lines to purchasers thereof located in other States of the United States in competition with other corporations engaged in similar lines of commerce.

PAR. 5. Most of such purchasers so located purchase such syrup which is of like grade and quality for use in the manufacture of candy. Such purchasers are competitively engaged in the sale of such candy to various customers including chain stores, wholesalers and retailers, all located in the several States of the United States and in the District of Columbia.

Such syrup has been sold and delivered by respondent in several types and sizes of containers, at prices per cwt. which increase over the tank car price per cwt. according to the size and type of container as follows:

Container	Price per hundredweight over tank car
Barrels	$0.33.
Half barrels	.58.
10-gallon kegs	.98.
5-gallon kegs	1.08.
Returnable drums	.13 Where there is no return freight on empty drums.
Do	.18 Where return freight on empty drum is between 50 and 75 cents per hundredweight.
Do	.23 Where return freight on empty drum is between 76 and 90 cents per hundredweight.
Do	.28 Where return freight on empty drum is between 91 cents and $1.00.
Do	.33 Where return freight on empty drum is more than $1.00.

PAR. 6. Between June 19, 1936, and August 1, 1937, respondent has sold such syrup at higher delivered prices per one hundred pounds to purchasers located

in certain cities other than Chicago, Ill., and Danville, Ill., than it has sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and Danville, Ill.; and between September 14, 1937, and the present time, respondent has sold such syrup to purchasers located in Danville, Ill., and to other purchasers located elsewhere outside of Chicago, Ill., at higher prices per one hundred pounds than it has sold such syrup in containers of like size and type to purchasers located in Chicago, Ill.

The higher prices at which such syrup was sold by respondent to such purchasers located in cities other than Chicago, Ill., were not uniformly higher than the prices at which such syrup was concurrently sold by respondent to purchasers located in Chicago, Ill., but such higher prices varied with the geographical location of the cities in which such purchasers were located.

Thus, on the following dates respondent sold such syrup to such purchasers located respectively in each of the following cities at the delivered prices per hundred pounds which are shown opposite said cities for such syrup (43° Baumé), in tank cars, or in other containers, in which latter case, for the purposes of comparison, no differential has been added for the containers:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$2.44	$3.04	$2.29	$2.09
Danville, Ill.	2.44	3.04	2.435	2.20
St. Louis, Mo.	2.60	3.20	2.47	2.27
Centralia, Ill.	2.60	3.20	2.47	2.27
Davenport, Iowa	2.60	3.20	2.47	2.27
Kansas City, Mo.	2.80	3.40	2.69	2.49
St. Joseph, Mo.	2.80	3.40	2.69	2.49
Memphis, Tenn.	2.80	3.40	2.69	2.49
Sioux City, Iowa	2.80	3.40	2.69	2.49
Aberdeen, Miss.	2.81	3.41	2.69	2.49
Chattanooga, Tenn.	2.82	3.42	2.71	2.51
Nashville, Tenn.	2.82	3.42	2.71	2.51
Jackson, Miss.	2.82	3.42	2.71	2.51
New Orleans, La.	2.855	3.455	2.75	2.55
Iola, Kans.	2.96	3.56	2.86	2.66
Little Rock, Ark.	2.99	3.59	2.89	2.69
Denver, Colo.	3.24	3.64	2.95	2.75
Jacksonville, Tex.	3.14	3.74	3.06	2.86
Fort Worth, Tex.	3.17	3.77	3.09	2.89
Dallas, Tex.	3.17	3.77	3.09	2.89
Abilene, Tex.	3.20	3.80	3.12	2.92

The differentials shown above as existing between the foregoing prices on August 1, 1936, and on August 1, 1937, were substantially the same during the entire period from June 19, 1936, until after August 1, 1937; and the differentials shown above as existing between the foregoing prices on August 1, 1938, and on August 1, 1939, were substantially the same during the entire period from September 14, 1937, until the present time.

PAR. 7. Since June 19, 1936, respondent has also sold such syrup for delivery in containers different in type and smaller in size than tank cars at higher prices to some purchasers than it has sold such syrup for delivery in the same type and size of containers to other purchasers.

Thus, in St. Louis, Mo., respondent sold such syrup delivered in returnable drums to some purchasers at a price of 13 cents per hundredweight over the tank car price in accordance with its pricing policy as set forth in paragraph 5 hereof but respondent concurrently sold such syrup in identical containers to other

purchasers in St. Louis at a price of only 4 cents per hundredweight over the tank car price.

PAR. 8. By selling such syrup at said different prices as found in paragraphs 6 and 7, the differences between which prices have not been justified by respondent and which differences make more than due allowance for differences in the cost of delivery, it has discriminated in price between such purchasers who have paid the various different prices for such syrup.

PAR. 9. The result of said discriminations has been to place the unfavored purchasers paying the greater prices for such syrup under a competitive disadvantage.

Such syrup is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy.

Not only is the quantity of such syrup used significant, but the price paid therefor by such purchasers is a substantial part of the cost of the raw materials used in particular candies having a relatively high syrup content as well as of the total cost of manufacturing an extensive line of candies having a wide range of syrup contents. Said costs of the unfavored of such purchasers increase over said costs of such favored purchasers directly as the amount of the discrimination between them increases.

Many candies containing a substantial quantity of such syrup are priced at but a few cents per pound. As to products so priced and bearing no differentiating name or brand, sellers have attracted customers by selling at only a small fraction of a cent per pound lower than a competitor. This has been especially true in selling such candies to chain stores and other purchasers of large quantities to whom such a small difference in price is determinative in placing their business.

Under such circumstances an unfavored purchaser's higher raw material costs are difficult if not impossible to recover by increasing the price of the candy manufactured if such unfavored purchaser hopes to maintain volume sales. The effect on such unfavored purchaser of the highest cost of such syrup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher syrup cost as long as such unfavored purchaser attempts to sell his candy at a competitive price.

Where such absorption causes an impairment of profit to any material degree, it results in such unfavored purchaser making only selective sales at noncompetitive prices to customers on the basis of service or some other nonprice basis and directly causes reduced volume of sales resulting in unused capacity and increased overhead unit costs on particular as well as on all products; the consequence again being impairment of profits.

Such impairment of profits tends to discourage and to weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry and does prove an effective determent to the establishment of new candy manufacturing enterprises in those areas in which respondent discriminates as found above.

A further result of said discriminations has been to confer upon the favored purchasers receiving the benefit of said discriminations a substantial monetary benefit which has given such benefited purchasers a substantial competitive advantage, enabling them to reduce the selling prices of their candy, lower costs, increase volume and increase profits.

In the matter of *Union Starch and Refining Company, Union Sales Corporation*, 32 FTC 60 (December 11, 1940). The following facts were as there stated:

PAR. 4. For many years in the course and conduct of its business respondent, Union Sales Corporation, has sold and shipped and does now sell and ship such sirup in commerce between and among the several States of the United States causing such sirup to be sold and shipped from said plant of the respondent, Union Starch & Refining Co., at Granite City, Ill., across State lines to purchasers thereof located in other States of the United States and in competition with other corporations engaged in similar lines of commerce.

PAR. 5. Most of such purchasers so located purchase such sirup, which is of like grade and quality, for use in the manufacture of candy. Such purchasers are competitively engaged in the sale of such candy to various customers, including chain stores, wholesalers, and retailers, all located in the several States of the United States and in the District of Columbia.

Such sirup has been sold and delivered by respondents in several types and sizes of containers at prices per hundredweight which increase over the tank car prices per hundredweight according to the size and type of container as follows:

Container	Price per hundredweight over tank car
Barrels	$0.33.
Half barrels	.58.
10-gallon kegs	.98.
5-gallon kegs	1.08.
Returnable drums	.13 Where there is no return freight on empty drums.
Do	.18 Where return freight on empty drum is between 50 and 75 cents per hundredweight.
Do	.23 Where return freight on empty drum is between 76 and 90 cents per hundredweight.
Do	.28 Where return freight on empty drums is between 91 cents and $1.
Do	.33 Where return freight on empty drums is more than $1.
Tank truck	.10 Where delivery is made by respondents' truck.
Do	.02 Where delivery is made by purchaser's truck.

PAR. 6. Between June 19, 1936, and July 23, 1937, respondent has sold such sirup at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago, Ill., Danville, Ill., North Chicago, Ill., Dixon, Ill., Zion, Ill. and Milwaukee, Wis., than it has sold such sirup in containers of like size and type to purchasers located in said cities of Chicago, Ill., Danville, Ill., North Chicago, Ill., Dixon, Ill., Zion, Ill., and Milwaukee, Wis., and between July 23, 1937, and the present time respondent has sold such sirup to purchasers located in all cities other than Chicago, Ill., at higher prices per hundredweight than it sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and such higher prices were not uniformly higher but varied with the geographical location of the cities in which the purchasers paying the higher prices were located.

Thus, on the following dates respondent sold such sirup to such purchasers located respectively in each of the following cities at the delivered prices per hundredweight which are shown opposite such cities for such syrup (43° Baume) in tank cars, or in other containers, in which latter case, for the purposes of comparison, no differential has been added for the container: