FEDERAL TRADE COMMISSION DECISIONS

▽

FINDINGS AND ORDERS OF THE FEDERAL TRADE COMMISSION

NOVEMBER 5, 1923, TO JULY 20, 1924

PUBLISHED BY THE COMMISSION

VOLUME VII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1926

MEMBERS OF THE FEDERAL TRADE COMMISSION.

AS OF JULY 20, 1924.

HUSTON THOMPSON, *Chairman.*
Took oath of office January 17, 1919, and September 26, 1919.[1]
VERNON W. VAN FLEET, *Vice Chairman.*
Took oath of office June 30, 1922.
NELSON B. GASKILL.
Took oath of office January 31, 1920.
JOHN F. NUGENT.
Took oath of office January 15, 1921.
CHARLES W. HUNT.
Took oath of office June 16, 1924.
OTIS B. JOHNSON, *Secretary.*
Took oath of office August 7, 1922.

During the period November 5, 1923, to July 20, 1924, there also served as a commissioner—

VICTOR MURDOCK.
Took oath of office September 4, 1917, and October 4, 1918.[1] Resigned January 31, 1924.

---

[1] Second term.

PREFACE.

This, the seventh volume of the Commission's decisions, covers the period from November 5, 1923, to July 20, 1924, inclusive. The steadily widening range of these decisions, and their growing importance as a code of business law, have already been referred to in connection with the publication of previous volumes, as has been the fact that the Commission is glad to send information regarding its decisions to those who do not possess a set, or do not receive its advance sheets.

This volume has been prepared and edited by Richard S. Ely, of the Commission's staff.

CONTENTS.

TABLE OF CASES.

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. Those in first letter caps, ordinary type, also refer to cases in which such orders have been issued, but which are not here reported in full. The names in *italics* refer to cases in which the Commission has entered orders of discontinuance or dismissal only.]

TABLE OF CASES.

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. Those in first letter caps, ordinary type, also refer to cases in which such orders have been issued, but which are not here reported in full. The names in *italics* refer to cases in which the Commission has entered orders of discontinuance or dismissal only.]

TABLE OF CASES IN WHICH PETITIONS FOR REVIEW OF, OR APPLICATIONS TO ENFORCE, ORDERS OF THE COMMISSION HAVE BEEN FILED IN THE CIRCUIT COURTS OF APPEALS FROM NOVEMBER 5, 1923, TO JULY 20, 1924.

TABLE OF CASES, ETC.—Continued.

FEDERAL TRADE COMMISSION DECISIONS.

FINDINGS AND ORDERS NOVEMBER 5, 1923, TO JULY 20, 1924.

FEDERAL TRADE COMMISSION

v.

ST. LOUIS WHOLESALE GROCERS' ASSOCIATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 893—November 5, 1923.

SYLLABUS.

Where an association, which included in its membership a large majority of the wholesale grocers located and doing business in a certain city, and the officers and members thereof; in a concerted effort (1) to coerce manufacturers who did not guarantee the products which they sold against decline into adopting such a policy, under penalty of losing a major part of their business in that market, (2) to promote the business of competing manufacturers who gave such guarantees, and (3) to destroy the competitive advantages of jobbers who purchased nonguaranteed goods on a decline over jobbers with large unsold stocks,

(*a*) Reported to the association the names of manufacturers who did not guarantee against a decline in the prices of their commodities;

(*b*) Caused the names of such manufacturers to be published and distributed in bulletins and letters coupled with suggestions as to the advisability of confining purchases to manufacturers who guaranteed prices of their commodities against decline;

(*c*) Solicited the names of and information concerning manufacturers who did and those who did not give such guarantees and caused the same to be published and distributed among the members of the association and others in bulletins and letters, together with statements setting forth the advisability of confining purchases to those manufacturers who followed the practice in question, and with comments denouncing and depreciating those who did not do so; and

(*d*) Boycotted and threatened with boycott or loss of patronage manufacturers and their agents or representatives who did not guarantee the prices of their commodities;

With the result that general and pronounced opposition and antagonism to the sale of goods not so guaranteed were experienced, sales declined heavily, and the retail trade was unable for a time to secure goods from said members:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Walter B. Wooden and *Mr. John H. Bass* for the Commission.

Mr. M. N. Sale, of Sale & Frey of St. Louis, Mo., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the St. Louis Wholesale Grocers' Association, its Officers and Members, including the various individuals, partnerships and corporations named in the caption hereof, hereinafter referred to as Respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, St. Louis Wholesale Grocers' Association, is a voluntary unincorporated trade association composed of wholesale dealers and jobbers of groceries and food products having their places of business in the State of Missouri. The object of said Association is to promote and protect the common interests of its said members, and the regulation of so-called trade abuses. Respondents, A. E. Gilster, P. G. Scudder, W. J. Buchanan and Walter J. Tancill, and their respective successors, were at all times hereinafter mentioned and still are Officers of said Association administering its affairs; Goddard Grocery Company, Goebel-Reid Grocery Company, Pioneer Grocery Company, Adam Roth Grocery Company, Landau Grocery Company, Niehoff Grocery Company, Gildehaus-Wulfing & Company, The Amos-James Grocery Company, Meyer-Schmid Grocery Company, Niess Grocery Company, Wulfing Grocery Company, Buchanan Grocery Company, Krekeler Grocery Company, S. D. Rossi Grocery Company, A. Moll Grocery Company, Haas-Lieber Grocery Company, The Coast Products Company, N. Comensky Grocery Company, L. Cohen Grocery Company, Louis Maull Company, The Scudders-Gale Grocery Company, Krenning-Schlapp Grocery Company, Lowell-Krekeler Grocery Company, August Nasse & Sons, G. H. Wetterau & Sons Grocery Company, J. M. Anderson Grocery Company, Tibbitts-Hewitt Grocery Company, were at all times hereinafter mentioned and now are corporations organized and existing under the laws of the State of Missouri and Members of said Association. From time to time the membership of said Association is increased by the addition of new members so that all the members of said Association at any given point of time cannot be specifically named as respondents herein without manifest inconvenience and delay, wherefore, the Officers hereinbefore named as Respondents as such officers, are also made Respondents as representing all members of said Association including those not herein specifically named. The various members of said Association purchase groceries and food

products in several States of the United States other than the State of Missouri, and cause said commodities to be transported from the States wherein the same are purchased to their respective places of business in the State of Missouri, and thereafter sell said commodities and cause the same to be transported from their respective places of business to purchasers at points in the State of Missouri and other States of the United States, and there has been continuously for a period of more than two years last past and still is a constant current of trade and commerce in the products dealt in by the various Members of Respondent Association between various States of the United States. In the course and conduct of their said businesses, Respondent Members of said Association are in competition with each other and with other individuals, partnerships and corporations engaged in the wholesaling of similar commodities, and with the trade generally.

PAR. 2. About the beginning of the Year 1921, Respondent Association acting on behalf of its said Members and in co-operation with them, adopted and has since carried out a policy and plan of coercing and attempting to coerce, manufacturers from whom the Members of said Association purchased the commodities in which they deal, into guaranteeing and assuring said Members that in the event of a reduction in the prices charged said Members by said Manufacturers for their products, each such Member holding in stock at the time of such reduction any of said commodities purchased prior to the time of said reduction, will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by the Member in each instance for said products actually on hand and unsold and said reduced prices thereof. In the carrying out of said plan Respondent Association and its Officers and Members co-operating together, have, since the adoption of said plan, continuously done and still do the following acts and things:

(*a*) The Members, respectively, report to the Association the names of all manufacturers who so guarantee in the sales of their products to Members, and the names of other manufacturers who so guarantee generally which come to the notice of the Members;

(*b*) The Association compiles a list of such guaranteeing manufacturers whose names have been secured by it as set out in Specification (a), and by other means, together with favorable comments relative to such manufacturers, and inserts the same in circular letters and bulletins issued by it, a copy of which it forwards to each Member of the Association for the information and use of the members in making purchases of the commodities in which they deal;

(*c*) The Association solicits from its Members, and the Members report to the Association, the names of manufacturers, especially of manufacturers of nationally advertised articles, who do not so guarantee. The Association lists said names in its said letters and bulletins, together with comments denunciatory or depreciatory of the manufacturers thus listed, a copy of which it forwards to each Member of the Association for the information and use of the Members in making purchases of the commodities in which they deal;

(*d*) The Association exchanges its aforesaid lists with other similar asociations for their similar lists, and forwards the lists received from such other associations to the Members of Respondent Association for their use in making purchases of the commodities in which they deal;

(*e*) The Association by means of letters, personal interviews and by other ways urges, and seeks by intimidation, to coerce various manufacturers who do not so guarantee, into adopting said practice and notifies the Members to co-operate with the Association in that regard by individually bringing similar pressure to bear upon said manufacturers;

(*f*) Said Members upon receiving the information and suggestions contained in the preceding Specifications bring similar pressure to bear upon said manufacturers who do not so guarantee to cause them to adopt said practice;

(*g*) The success or failure of the coercive efforts set out in Specifications (*e*) and (*f*) is so notified by the Association to its Members and vice versa;

(*h*) The names of the manufacturers who adopt said practice either voluntarily or by reason of the pressure brought to bear upon them, as above set out, are inserted in letters and bulletins thereafter issued to be added to the list of names of guaranteeing manufacturers and copies of said letters and bulletins are sent by the Association to its Members from time to time;

(*i*) In making current purchases of the products in which they deal, the Members use the lists and information received and acquired through the foregoing means and wherever possible make said purchases from the manufacturers so guaranteeing in preference to the manufacturers who do not, or who refuse to, so guarantee.

(*j*) Use other equivalent cooperative means to carry out said plan.

PAR. 3. The acts and things done by Respondent Association, its Officers and Members cooperating together, as above set out, tended

and still tend to restrict, diminish and obstruct the sales and business of manufacturers of food products who do not guarantee as above set out, to the advantage of competing manufacturers of similar products who do so guarantee, and whose names appear in aforesaid lists, circular letters and bulletins, and unduly to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 4. The above alleged acts and things done by Respondents and by each of them are all to the prejudice of the public and Respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents herein, charging them with unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearances by their attorneys, Sale & Frey, and respondents having duly filed their answers, admitting certain allegations of said complaint and denying others, and setting up certain new matter in defense, and hearing having been held before an Examiner of the Commission, theretofore duly appointed, and the Commission having offered evidence in support of the said charges of the complaint, and said respondents having offered evidence in their defense, which evidence was recorded, duly certified, and duly transmitted to the Commission; and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received, as heretofore set out, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. (*a*) The respondent, the St. Louis Wholesale Grocers' Association, of St. Louis, Mo., is a voluntary, unincorporated association, hereinafter referred to as respondent association. The object of said association is to promote and protect the common interests of its members and the regulation of so-called trade abuses; the respondent association has been in existence at least since June, 1919. In 1919, its secretary was Hugh H. Mace, who in August, 1921, was succeeded by the respondent Walter J. Tancill, the present

secretary. The Association's first president was respondent A. E. Gilster, who was succeeded in February, 1921, by F. M. Canter. Mr. F. M. Canter was succeeded on February 7, 1922, by respondent A. E. Gilster;

(*b*) At the time of filing complaint, the membership of said respondent association comprised the great majority of all the wholesale grocers located and doing business at St. Louis and consisted of the following firms and corporations:

Goddard Grocery Co.
Goebel-Reid Grocery Co.
Pioneer Grocery Co.
Adam Roth Grocery Co.
Landau Grocery Co.
Niehoff Grocery Co.
Gildehaus-Wulfing & Co.
The Amos-James Grocery Co.
Meyer-Schmid Grocery Co.
Niese Grocery Co.
Wulfing Grocery Co.
Buchanan Grocery Co.
Krekeler Grocery Co.
S. D. Rossi Grocery Co.
A. Moll Grocery Co.
Haas-Lieber Grocery Co.
The Coast Products Co.
N. Comensky Grocery Co.
L. Cohen Grocery Co.
Louis Maull Company.
The Scudders-Gale Grocery Co.
Krenning-Schlapp Grocery Co.
Lowell-Krekeler Grocery Co.
August Nasse & Sons.
G. H. Wetterau & Sons Grocery Co.
J. M. Anderson Grocery Co.
Tibbitts-Hewitt Grocery Co.

All of the said members are located in the city of St. Louis and purchase groceries and food products in several states of the United States other than the State of Missouri, and cause said commodities to be transported from the states wherein the same are purchased to their respective places of business in the state of Missouri, and thereinafter sell said commodities and cause the same to be transported from their respective places of business to purchasers at points in the state of Missouri and other states of the United States, and there has been continuously for a period of more than three years past, and still is, a constant current of trade and commerce in the products dealt in by the various members of said respondent association between various states of the United States. In the course and conduct of their said businesses, respondent members of said respondent association are in competition with each other and with other individuals, partnerships and corporations engaged in the wholesaling of similar commodities and with the trade generally.

(*c*) Since the filing of the complaint the respondents Pioneer Grocery Co., L. Cohen Grocery Company, J. M. Anderson Grocery Co., Coast Products Co., and A. Moll Grocery Co. have withdrawn their membership in the respondent association although at the time

of hearing they were still in existence. Respondent J. M. Anderson Grocery Co. is no longer functioning as a firm, but is in fact out of business.[1]

The St. Louis Wholesale Grocery Co., not named in the complaint, a Missouri corporation engaged in a similar line of business as respondents named in paragraph one, section (b), was a member of the St. Louis Wholesale Grocers' Association in the years 1920 and 1921, but has since ceased to function as a corporation and no longer is in business.

(*d*) From time to time the membership of the respondent association has been and is increased by the addition of new members so that all the members of the said respondent association at any given point of time could not be specifically named as respondents in the complaint without manifest inconvenience and delay, therefore, the officers hereinafter named as respondents, to wit: A. E. Gilster, its president, P. G. Scudder, its vice president, W. J. Buchanan, its treasurer, and Walter J. Tancill, its secretary, and their successors, as such officers were also made respondents as representing all members of said respondent association, including those not specifically named in the complaint.

At the present time two new firms are members of the respondent association, to wit: Consumers Grocery Co. and Hassendeubel Co.

PAR. 2. In the fall of 1920 and the spring of 1921 the sale of food products, including those nationally advertised, was sharply reduced owing to the collapse of consumptive demand. This left the wholesalers, including members of respondent association, with large stocks of goods on hand for which there was no immediate market, and for which they had paid more than the current or replacement cost. The majority of manufacturers of nationally advertised food products guarantee the price of their products against their own decline, meaning by this that in the event of the manufacturer lowering his own selling price he will allow the jobber a rebate or credit allowance on the jobber's unsold stocks equivalent to the difference between the price paid by the jobber and the reduced price put into effect by the manufacturer. The period and terms of this guarantee have varied among the different manufacturers and different com-

[1] Complaint dismissed as to this respondent by the following order of even date:

This proceeding having come on for hearing before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial Examiner's report upon the facts, and the exceptions thereto, and it appearing to the Commission that the respondent, J. M. Anderson Grocery Company, since the issuing of the complaint herein, has ceased to function as a going concern and is, in fact, out of business, and the Commission being fully advised in the premises,

It is ordered, That the complaint herein be, and the same is hereby, dismissed as against respondent J. M. Anderson Grocery Company, for the reason that said respondent is no longer functioning as a going concern, but is, in fact, out of business.

modities. Other manufacturers of nationally advertised food products do not guarantee their products against their own decline. The practice of guaranteeing against decline by manufacturers is looked upon with favor by the majority of jobbers. One of the effects of a guarantee against decline is to offset or nullify the competitive disadvantage which a jobber with heavy unsold stocks suffers as against jobbers who purchase stocks following a decline in the manufacturer's price.

PAR. 3. The conditions described in the preceding paragraph brought about an effort on the part of the members of respondent association to cooperate with each other in the disposition of surplus stocks by purchasing such items as were in surplus from each other instead of from the manufacturer. This led in the course of a few months to the formation within the St. Louis Wholesale Grocers' Association of an informal organization composed of the buyers for the respective respondent members. This organization was known generally as the Buyers' Conference and its chief purpose was to facilitate cooperative purchasing from manufacturers and the cooperative handling between the members of their surplus stocks. It became an active and prominent part of the association in August, 1921. In February, 1922, the chairman of the Conference and association officials credited it with having "created a wonderful spirit of cooperation amongst the jobbers." The Buyers' Conference was discussed at meetings of the Board of Directors of respondent association and attendance at the Conference meetings was urged upon the members of the association by officers of the latter.

PAR. 4. Among the items of which respondents had a surplus stock during the latter part of 1920 were Jell-O, manufactured by the Genesee Pure Food Co. of Leroy, N. Y., and the cocoa and chocolate products of W. H. Baker, Inc., of Winchester, Va. When the manufacturers' prices of various food products declined in the fall of 1920 the secretary of respondent association was instructed by the Board of Directors of said association to write a letter to the Genesee Pure Food Co. "protesting their lack of guarantee against decline." This occurred before any decline in the price of Jell-O had been announced by the manufacturer. At this same meeting the secretary was instructed to write to a certain manufacturer's representative "explaining the appreciation of the St. Louis Wholesale Grocers' Association and its members for the definite and determined stand" which his house had taken with reference to guarantee against decline.

PAR. 5. About this time a member of respondent association informed the St. Louis representative of W. H. Baker, Inc., that the

failure of his company to guarantee against decline had been discussed at the weekly meeting of wholesale grocers and that unless his company protected the jobbers against decline to the same extent as competitive manufacturers, the jobbers of St. Louis would no longer cooperate with his company. About this same time various members of respondent association wrote letters to the Genesee Pure Food Co. and the St. Louis representative of W. H. Baker, Inc. stating that because of the manufacturers' refusal to guarantee against decline they would have to discontinue handling their respective goods. Despite their knowledge that neither the Genesee Pure Food Co. nor W. H. Baker, Inc. guaranteed their products against decline various members of respondent association submitted formal claims for reimbursement covering declines on their unsold stocks of these two manufacturers' goods and made strong representations that such claims should be allowed.

PAR. 6. In a bulletin issued to respondent members under date of January 13, 1921, the secretary of respondent association reproduced a letter from the Genesee Pure Food Co. in reply to the Secretary's letter of December 20, 1920, stating that the policy of the company was not to guarantee against decline. This letter was reproduced side by side with a letter from Charles B. Knox Gelatine Co., a competitor of the Genesee Pure Food Co., in which the former announced a policy of guaranteeing against decline. The secretary followed these letters with this comment:

> We are merely sending this to show you the absolute contrast and fairness with which other concerns in the Gelatine line have acted, compared with that of the Genesee Pure Food Company, manufacturer's of Jell-O.
>
> We want to show you furthermore, that other large concerns, due to the fact that they are large, do not try to gouge the Wholesale Grocer out of his slim profit which he does make on the goods handled, but they come back and give us an absolute protection against decline, and also give us protection when their goods advance.
>
> The Jobber should show concerns of this kind great consideration. As a matter of fact they should also give the Jiffy-Jell people (who have been kind enough to protect every dollar's worth of floor stock) 100% cooperation.

PAR. 7. In a bulletin issued to his members on January 15, 1921, the secretary of respondent association reproduced a list of manufacturers who guaranteed their products against decline, said list having been received from the Wisconsin Wholesale Grocers' Association. In this bulletin the secretary of respondent association requested his members to furnish him with lists of manufacturers

who guaranteed their products against decline and also lists of those who did not so guarantee, stating that these lists were desired "so that your organization may work for a guarantee on those commodities which are not now guaranteed." In a bulletin to respondent members dated January 22, 1921 the secretary, in referring to his previous request for lists of articles not guaranteed against decline stated he had received "only a few replies, and before starting on our work we would like to have a list of as many products not guaranteed against decline as you know of." Pursuant to the request of the secretary in this bulletin various members of respondent association reported to the secretary the names of manufacturers who guaranteed against decline and those who did not do so. The secretary wrote to various manufacturers inquiring as to their policy with regard to guarantee against decline and bulletined the replies received to his members.

PAR. 8. In a bulletin to respondent members dated February 21, 1921, the secretary suggested that the members communicate with manufacturers who did not guarantee against decline and ask them to establish such a guarantee. In a bulletin to respondent members dated February 22, 1921, the secretary gave the members a complete list of concerns guaranteeing against decline and asked them to report any omission or error. The secretary expressed his indebtedness to the secretary of another wholesale grocers' association for a great part of this list. A member of respondent association informed the secretary of an error in the bulletin of February 22, 1921 as to the guarantee policy of W. H. Baker, Inc., whereupon the secretary verified the member's report by correspondence with said manufacturer and corrected the bulletin by circularizing the membership.

PAR. 9. At the annual meeting of the association in February, 1921, the president appointed a committee on the Buyers Conference for the coming year. At a meeting of the Board of Directors on March 28, 1921 a report was made on surplus stock lists. At this last meeting a resolution was adopted declaring it to be the sense of the St. Louis Wholesale Grocers' Association that manufacturers should not put on free deals or free goods campaigns, "unless the entire stock was protected on the free deal basis." The meeting also decided to send a copy of this resolution to all manufacturers who had free deals in force which the wholesale grocer objected to.

PAR. 10. The respondent association has been accustomed to exchange its bulletins and circulars with wholesale grocer associations in other parts of the United States. While it has received from such other associations bulletins showing that these organizations were also interested in the subject of securing guarantees against decline from manufacturers, there is no evidence that the respondent association

distributed to the other associations the particular bulletins of respondent association herein described. It was respondent secretary's custom, however, to send many of his bulletins to the secretaries of other wholesale grocer associations.

PAR. 11. During the period beginning in the fall of 1920 and continuing till the fall of 1921 the respondent members were discussing with each other the guarantee policy of various manufacturers. During this same period many of respondent members refused to purchase the goods of the Genesee Pure Food Co. and W. H. Baker, Inc. and notified the representatives of said manufacturers that their refusal to guarantee against decline was the reason for said refusal to purchase. During this same period members of respondent association informed the representative of W. H. Baker, Inc. that the policy of his house with reference to guarantee against decline had been unfavorably discussed at meetings of the St. Louis jobbers and that his house was "in bad" with the St. Louis jobbers because of its policy. The representative of W. H. Baker, Inc. was informed by one member of respondent association that his fate would be similar to that of the Genesee Pure Food Co. which had refused to guarantee against decline as demanded by the St. Louis Wholesale Grocers' Association and as a consequence its goods were absolutely out of the St. Louis market.

PAR. 12. In August, 1921, a member of the Buyers' Conference of the St. Louis Wholesale Grocers' Association informed the sales representative of W. H. Baker, Inc., that the Conference had decided to purchase only advertised brands which were guaranteed against decline; that unless W. H. Baker, Inc., established such a guarantee it would be quietly dropped and that it was the sense of a recent meeting of St. Louis jobbers that they should handle only advertised brands on which there was a guarantee against decline. Shortly thereafter the representative of this manufacturer experienced general and pronounced opposition and antagonism in endeavoring to sell goods to members of respondent association. He reported to his house that "every call is a battle now and the few orders I have secured each order is evidence of a strenuous battle and argument and the majority of the few I have won over is through personal friendship."

PAR. 13. Early in September, 1921, a committee representing the St. Louis buyers called in the representative of W. H. Baker, Inc., and called his attention to the fact that whereas he had formerly handled 75% of all the cocoa and chocolate business of St. Louis he was then a poor third. In this connection the committee endeavored to secure an unlimited guarantee against decline from

W. H. Baker, Inc., by citing to its representative the policy of a competing manufacturer. The stock of W. H. Baker, Inc., products in the hands of St. Louis jobbers during 1921 was being traded and exchanged through the operations of the Buyers Conference at the same time that Baker's representative was unable to secure business and large orders were being placed with Baker's competitors.

PAR. 14. In April, 1921, a member of respondent association informed the St. Louis representative of the Genesee Pure Food Co. that at a meeting of the St. Louis Wholesale Grocers' Association a roll call was held to ascertain which members were handling Jell-O and that none of the members were found to be handling it. Shortly after the Genesee representative informed this member that a certain other member was handling Jell-O the latter ceased buying that product. In or about April, 1921, a member of respondent association issued a bulletin to its salesmen urging them to sell Jiffy-Jell, a product competing with Jell-O. At this time respondent members were pushing the sale of Jiffy-Jell while various retail grocers in St. Louis were unable to secure Jell-O from the St. Louis jobbers from whom they had previously purchased it, and with whom they were accustomed to deal. In or about June, 1921, the stocks of Jell-O in the hands of respondent jobbers became depleted and Jell-O was in demand by retailers and consumers. Thereupon one of respondent members who had been most active in the opposition to Jell-O placed an order direct with the Genesee Pure Food Co. representative and thereafter a number of respondent jobbers resumed the buying of Jell-O, although some continued to refuse to purchase it and criticized the concerns which had resumed purchasing it. During the period when many of respondent members were refusing to buy Jell-O direct from the manufacturer some of them secured their supplies of this article from other respondent jobbers through the exchange of surplus stock lists and as a part of the operations of the Buyers Conference above described.

PAR. 15. Under the circumstances set out in the foregoing paragraphs the acts, representations, methods and practices of respondent association, its officers and members, as also set out therein, constituted a concerted effort and attempt on the part of respondents to coerce manufacturers who did not guarantee against decline to establish such a guarantee under penalty of losing all or a major part of their business in the St. Louis market by reason of the fact that respondent association included practically all the jobbers in that market, and to promote correspondingly the business of competing manufacturers who did guarantee against decline. Said acts, representations, methods, and practices also constituted a con-

certed effort and attempt on the part of respondents to destroy the competitive advantages which jobbers purchasing non-guaranteed goods on a decline had over jobbers with large unsold stocks of the same goods.

PAR. 16. Declines in the price of manufactured food products ceased to be an important factor in the wholesale markets by the close of 1921 and thus for the time being the occasion passed for further concerted action by respondents with reference to the subject of guarantee against decline.

CONCLUSION.

That the practices of the respondents, as set forth in the foregoing Findings as to the Facts are in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel, oral argument having been waived by respondents' counsel, and the Commission having made its Findings as to the Facts and having reached its conclusion that the respondents have violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondents, and each of them, their officers, directors, representatives, agents, and employees cease and desist from cooperating among themselves or with others directly or indirectly, to induce, influence, or coerce, and from inducing, influencing, or coercing by cooperative methods, manufacturers from whom they purchase the goods and commodities in which they deal, into guaranteeing and assuring them that in the event of a reduction in the prices charged them by said manufacturers for such commodities each such respondent holding in stock at the time of such a reduction any of said commodities purchased prior to the time of such reduction will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by him in each instance for said commodities actually on hand and unsold and said reduced prices thereof;

(1) By the practice of reporting to respondent association the names of manufacturers who do not so guarantee the prices of their commodities against decline.

(2) By causing the names of manufacturers thus reported, who do not so guarantee the prices of their commodities against decline, to be enrolled upon a list and such list inserted and published in bulletins and letters issued and distributed by respondent association, together with information emphasizing the advisability of confining their purchases to manufacturers who guarantee the price of their commodities against decline.

(3) By the practice of soliciting the names of and information concerning manufacturers who do and those who do not guarantee the prices of their commodities against decline, and causing such names and information to be published and distributed among the members of respondent association and others by means of bulletins and letters containing such names together with information and statements setting forth the advisability of making purchases from those manufacturers who guarantee the price of their commodities against decline and the inadvisability of purchasing from manufacturers of competitive commodities who do not so guarantee the prices thereof against decline, and comments denunciatory and depreciatory of such manufacturers who do not so guarantee against decline.

(4) By boycotting, or threatening to boycott, or threatening with loss of patronage or custom any manufacturer, or his agent or representative, who does not guarantee the prices of commodities sold by him against decline.

(5) By utilizing any other equivalent cooperative means of obtaining from manufacturers guarantees or assurances against decline in the price of their commodities.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within 60 days from date of this order, its report in writing stating the manner and form in which this order has been conformed to.

FEDERAL TRADE COMMISSION

v.

ABBOTT E. KAY AND R. T. NELSON, AS INDIVIDUALS AND AS CO-PARTNERS, DOING BUSINESS UNDER THE NAME OF AABAN RADIUM COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 943—November 10, 1923.

SYLLABUS.

Where individuals engaged in the manufacture and sale of a substance as radium, which substance, when subjected to the most approved tests, showed no radio activity; in the advertisement and sale thereof

(*a*) Assumed and used the name "Aaban Radium Co."; and

(*b*) Represented said substance to be radium:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. W. T. Roberts for the Commission.

Mr. Charles Fensky of St. Louis, Mo., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Abbott E. Kay and R. T. Nelson, as individuals, and as co-partners, doing business under the name of Aaban Radium Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Abbott E. Kay and R. T. Nelson, are residents of the City of Chicago, State of Illinois, and as individuals, and as co-partners, under the name of Aaban Radium Company, are engaged in the manufacture and sale of a product purporting to contain radium, but which, as a matter of fact, contains no radium. Respondents, and each of them, cause the product hereinbefore referred to and falsely held out and represented to contain radium, to be sold and transported from the City of Chicago, State of Illinois, to purchasers, through and into various other States of the United States. In the course of the business above referred to respondents have been, and now are, in competition with other persons, partner-

ships, and corporations engaged in the manufacture and sale of radium and radium products in interstate commerce.

PAR. 2. The above named respondents, and each of them, advertise in magazines and other periodicals of general circulation throughout the United States, as well as by circulars and letters transported through the mails to prospective purchasers in the several states of the United States to the effect that the product above referred to contains radium, with the tendency to mislead and deceive the purchasing public into the belief that such product is genuine radium.

PAR. 3. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Abbott E. Kay and R. T. Nelson, as individuals and as co-partners doing business under the firm name of Aaban Radium Company, charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents, Abbott E. Kay and R. T. Nelson, having made answer and entered their appearances individually and in person; hearing was had before Web Woodfill, the examiner heretofore duly appointed; evidence both oral and documentary was introduced in behalf of the Commission and the respondents, and this proceeding came on for final hearing; and the Commission being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That Abbott E. Kay is a resident of the City of Chicago, State of Illinois, and has resided in said city for more than ten years last past; that he is a graduate of the medical department of Illinois University and has been engaged in the practice of his profession in said city for a number of years last past; that the respondent, R. T. Nelson, is a resident of said city also and is engaged in the business of loaning money on real estate mortgages and has been interested in the subject of radium for some time past; that the respondents acted together in the production and sale of

so-called radium and held themselves out to the public as partners acting under the name and style of Aaban Radium Company by having said name printed on the office door which they were preparing to use jointly in the sale and distribution of the product claimed by them to be radium.

PAR. 2. That the respondent, Abbott E. Kay, is engaged in the manufacture and sale of a product claimed by him to be radium and that he caused said product to be transported from the City of Chicago, State of Illinois, through and into various other States of the United States to prospective purchasers located in the several States as aforesaid, and that he offered said product for sale at the price of $10 per milligram to various persons located in other States to whom he shipped tubes and plaques of said product, the same being offered for sale when the said prospective purchasers so desired on what the said respondent terms the "escrow plan," which said plan is as follows: The said product being delivered to the prospective purchaser as aforesaid, said money being held in the said home bank by agreement for ninety days, after which time it is forwarded to said respondent, Abbott E. Kay. If, however, before the end of the said ninety days said prospective purchaser of said product decides that said product is not of the value as represented by said respondent, Abbott E. Kay, the said prospective purchaser may return said product to said home bank and after same has been identified said money so held in said bank is to be returned to said prospective purchaser.

PAR. 3. That the respondent, Abbott E. Kay, in his offer for sale and in causing his said product to be transported as heretofore set out is in active and direct competition with other persons, firms and corporations engaged in the sale of genuine radium.

PAR. 4. That the said respondent, Abbott E. Kay, has advertised said product for sale in the Boston Medical & Surgical Journal which is a journal of general circulation throughout the United States; that he also advertised said product in other publications and in circulars and letters to prospective purchasers of said product in the several States, in all of which advertising matter the said respondent claimed that the product so offered for sale by him was genuine radium.

PAR. 5. That the United States Bureau of Standards at Washington, D. C., acting on the request of several of the said prospective purchasers who had received packages of said so-called radium from the said Abbott E. Kay, examined and tested the product so claimed to be radium by the methods usually employed for such purpose, the same being what is known as electroscopic test as well as a

photographic test; that both the said tests showed that said product had no radio activity and that the same is not radium but is some other substance the exact character of which has not been determined.

PAR. 6. The evidence shows that the prevailing price for radium throughout the United States for several years last past has ranged from $70 to $120 per milligram.

PAR. 7. The product known as radium is largely used by the medical profession in the treatment of cancer and various skin diseases and the usual and customary way of determining whether or not the substance claimed to be radium is in fact radium is and has been for many years past to submit the product to the Bureau of Standards in order that the same may be tested and its radio activity determined by the use of instruments and other facilities provided by the United States Government at said Bureau for the determination of such question.

PAR. 8. The respondent, Abbott E. Kay, claimed that he produced the substance claimed by him to be radium in a laboratory located in his own home in the city of Chicago, when according to the testimony a large and extensive plant is required to separate or extract the product known as radium from the rocks and ores in which it is found and mined, it sometimes being necessary to reduce as much as a ton of ore in order to find one milligram of radium.

CONCLUSION.

The above practice of the said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence received by the Examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondents, Abbott E. Kay and R. T. Nelson, as individuals and as co-partners, doing business under the

ıame of Aaban Radium Company, their servants, agents and em-)loyees, cease and desist from further, in any manner whatsoever,

1. Selling or offering for sale or advertising as and for radium the product heretofore sold and advertised as and for radium by respondents.

2. Applying, employing or using the word "radium" in connection with the sale, offering for sale, or advertising of the products heretofore sold and advertised as and for radium by respondents.

3. Making or causing to be made in advertising matter or otherwise representations, statements or assertions that the product heretofore sold and advertised by respondents is radium, or that said product contains radium.

4. Making or causing to be made any false statement, claim or representation of similar import or effect in connection with the sale of any other product or substance.

It is further ordered, That the respondents shall, within sixty (60) days after the service upon them of a copy 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

STANDARD EDUCATION SOCIETY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 994—November 10, 1923.

SYLLABUS.

Where a corporation engaged in the production of a set of books which it called "The Standard Reference Work", and of a loose-leaf extension service intended to supplement said reference work, and in the sale of said work and service together for the sum of $49;

(*a*) Represented to customers and prospective customers that it would present to subscribers to its loose-leaf service for a period of 10 years, for the sum of $49, its "Standard Reference Work" free of charge, falsely naming some figure greatly in excess of $49 as representing its usual and customary price for such service;

(*b*) Falsely represented to prospective customers that said work and service were being sold to a limited number of persons in a given community at a special reduced price of $49, naming some sum far in excess of such figure as representing its usual selling price;

(*c*) Falsely represented that various books at times sold by it in connection with such work and service were given "free", the fact being that the price charged sufficiently exceeded the usual selling price of such work and service as to constitute a full and fair price for said books;

(*d*) Falsely represented that its publications were bound in "Rich Maroon Levant";

(*e*) Offered to prospective customers, as an inducement to purchase its said publications, "Honorary Membership" in the "Standard Education Society", representing such membership as entitling the customer to certain emoluments and benefits, the fact being that said pretended membership was fictitious and no such thing was permissible under the terms of its corporate organization; and

(*f*) Advertised and represented that its standard reference work had been "officially adopted by twenty-four states", the fact being that, while approved for use in public schools by various state departments, it had never been officially adopted by any state;

With the tendency and capacity to deceive the purchasing public and induce the purchase of its publications in reliance upon the truth of said representations:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. James McKeag of Langworthy, Stevens & McKeag of Chicago, Ill., for respondent.

COMPLAINT.[1]

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Standard Education Society, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Standard Education Society, is a corporation organized, and existing under the laws of the State of Minnesota, with its principal office and place of business in the City of Chicago, State of Illinois, where it has been engaged for more than one year last past in the production and sale in interstate commerce of a certain set of books which it designates as "The Standard Reference Work." In the course and conduct of its said business respondent is in competition with various other persons, partnerships and corporations similarly engaged.

PAR. 2. Respondent employs various agents, upon a commission basis, in the various States of the United States and the cities thereof, to sell its said books by personal solicitation. The orders received by the said agents are transmitted to the said main office of respondent, and the said books are shipped in interstate commerce from the city of Chicago to the purchasers so ordering them, at their respective places of residence in the various States of the United States and in the District of Columbia.

PAR. 3. Respondent originally sold its said books in the manner set forth above, principally to school teachers and students who were preparing themselves to become teachers. Later respondent extended its said business and commenced selling, and now sells and offers for sale, its said books to business men through its agents as hereinbefore set out.

PAR. 4. In the course and conduct of its said business, respondent, by its agents, represents to various individuals throughout the different States of the United States that respondent will present free of charge, its said set of books designated as "The Standard Reference Work," upon the condition that such citizens will give prospective purchasers of said books in the community their opinion concerning the merit of said books. As a condition precedent to availing themselves of this free offer such individuals are required to

[1] As amended.

subscribe for a so-called extension service which respondent designates as "The Standard Loose-Leaf Extension Service," accompanying "The Standard Reference Work," which Service respondent, by its agents, represents that it will thereafter furnish to the owners of the above-described sets of books sold by it, so that information concerning current events may be obtained twice each year as supplementary to said books. The price at which such extension service is to be furnished is represented by respondent, through its agents, to be the sum of $49, which sum pays for the said service for a period of 10 years, all of which $49 is to be paid within one year after the date of the transaction and to be paid in monthly instalments. The representation by respondent that the sum of $49 is for the so-called extension service is false and misleading, as such sum is greatly in excess to the price at which respondent can furnish such service to bona fide purchasers, and is sufficient to compensate the said respondent for the set of books so delivered to the above-described individuals together with the accompanying extension service. And in subscribing to the extension service in the manner set out above, the purchaser is in truth and in fact purchasing the said set of books and the said extension for $49, under the mistaken belief that he is receiving the said set of books free of charge and is paying only for the Loose-Leaf Extension Service.

PAR. 5. Respondent, through its agents, represents to various persons in various communities that in said community a limited number of persons will be sold the said books of respondent at a special reduced price, and respondent, through its agents, represents that the true price of said books, as customarily sold by respondent together with the said extension service, is $134, but that such limited number of persons can obtain the same at the specially reduced price of $49, and further represents that the said price of $49 is not available to the general public, whereas, in truth and in fact, respondent has never sold the above-described sets of books and the extension service for the sum of $134, nor has it ever sold or offered for sale, such sets of books and extension service for a greater sum than $49, which is the usual and customary price at which respondent has sold and now sells the sets of books and extension service to all persons who can be induced to purchase same.

PAR. 6. Respondent, through its agents, by means of various false representations, induces various individuals to accept the said books and Loose-Leaf Service upon approval, with the understanding that if said books are not found to be satisfactory by the person to whom they are so sent upon approval, the books

may be returned to respondent at respondent's expense. In all of such instances the purchasers are induced to sign an order which does not contain the provision that the books will be sent subject to approval, but which order contains an unconditional promise to pay the sum of $49, the customary selling price of said books and Loose-Leaf Extension Service. In such instances the said orders so obtained are assigned by respondent to an alleged innocent purchaser for value, who proceeds to enforce collection of the amount of the selling price named in said orders, and in this way respondent prevents the purchasers from exercising their option of returning the books to respondent at its expense.

PAR. 7. Respondent in the course of its business represents and has represented that the books sold by it heretofore mentioned are bound in "Rich Maroon Levant," whereas in truth and in fact they are bound in a cheap imitation of leather.

PAR. 8. Respondent, in the course of its business and as an inducement to the purchase of its books, offers to its prospective customers and customers "Honorary Membership" in the "Standard Education Society" and accepts written applications therefor on printed forms prepared by respondent. In making such offers and in accepting such applications, respondent represents to its prospective customers and customers that such honorary memberships entitle the customer to certain emoluments and benefits and such representations have tendency to induce and do induce the customers to purchase respondent's books in the belief that some additional benefit is to accrue to them by reason of being an honorary member of the Standard Education Society. These representations are false and misleading in that there is no such thing as an honorary membership in the Standard Education Society and that by the terms and scheme of its corporate organization such memberships are not permissible.

PAR. 9. Respondent, in the course of its business, in some instances, sells its set of books designated as "The Standard Reference Work and Extension Service" in connection with other books and in such cases represents that the books other than the Standard Reference Work are given to the customer free and without charge, whereas in truth and in fact the price obtained by the respondent is so far in excess of the usual selling price of The Standard Reference Work and Extension Service as to constitute a full and fair price for all of the books delivered to the customer. Respondent's representations in this behalf are false and misleading and have the tendency to induce the purchase of its books by its customers in the belief that

they are getting something free and without charge, when such is not the fact.

PAR. 10. Respondent, in the course of its business, advertises and has advertised that its set of books designated as "The Standard Reference Work" has been "officially adopted by twenty-four states," whereas in truth and in fact said publication has never been officially or otherwise adopted by any state.

PAR. 11. Respondent, in the course of its business, prints and circulates, in aid of the sale of its publication, commendations of its said publications, which commendations were prior to their printing and circulation by respondent, withdrawn and abrogated by the persons who signed same.

PAR. 12. The above alleged acts and things done by respondent are all to the prejudice of the public, and to the prejudice of the competitors of said respondent, Standard Education Society, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent, Standard Education Society, a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer, and an agreed statement as to the facts having been made and filed, in which it is stipulated that the facts therein recited may be taken as the facts in this procedure and in lieu of testimony, and upon such facts the Commission may proceed further to make its report in said proceeding. Stating its findings as to the facts and conclusion, and enter its order disposing of the proceeding,

Thereupon, this proceeding came on for final hearing, without oral argument; and

The Commission having duly considered the record, and having now been fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Standard Education Society, is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business in the City of Chicago, State of Illinois, where it has been engaged for several years last past in the production and sale in interstate commerce of a certain set of books designated by it as "The Standard Reference Work," and certain loose leaves issued every six months, intended to supplement said set of books and to bring same down to date, designated by respondent as "The Standard Loose-Leaf Extension Service." In the course and conduct of its said business, respondent has been and is in competition with various other persons, partnerships and corporations similarly engaged.

PAR. 2. In the course and conduct of its business, respondent employs numerous agents upon a commission basis to sell its said publications by personal solicitation in various States of the United States. The orders given to the said agents by customers are transmitted to the said main office of respondent and the said publications are shipped in interstate commerce from the City of Chicago to the purchasers who order them, at their respective residences in the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent, through its agents, has represented and represents to its prospective customers that it will present, free of charge, its said set of books designated as "The Standard Reference Work," upon the condition that the prospects will subscribe for and purchase "The Standard Loose-Leaf Extension Service" at the price of $49, said sum to pay for the said service for a period of ten years, and to be paid within one year after the date of the transaction. In connection with said pretended free offer, the respondent represents that the price of $49 is a special price and that the usual and customary price received for said Loose-Leaf Extension Service is greatly in excess of $49. The respondent, in connection with said pretended free offer, has in many instances, through its agents, represented that the usual selling price for "The Standard Reference Work" is $85, or some other amount greatly in excess of the usual selling price of both "The Standard Reference Work" and the "Extension Service." The aforesaid representations made by respondent are misleading, in that the price asked for the Extension Service is the usual and customary price obtained by the respondent for both the "Extension Service" and the "pretended gift," "The Standard Reference Work."

PAR. 4. Respondent, through its agents, has represented to its prospective customers that a limited number of persons residing in a given community will be sold said "The Standard Reference Work," and the "Standard Loose-Leaf Extension Service" by respondent at a special reduced price, usually $49, and that the usual selling price for both of said publications is $134, or some other sum far in excess of the pretended special price, and has further represented that the said price of $49 is not available to the general public, whereas, in truth and in fact, respondent's usual and customary price to all persons who can be induced to purchase same, for both of said publications when sold together, has been $49.

PAR. 5. Respondent, in the course and conduct of its business, in some instances sells and offers to sell "The Standard Reference Work" and the "Extension Service" in connection with other books, and in such cases represents that the books other than "The Standard Reference Work" and the "Standard Loose-Leaf Extension Service," are given to the people without charge, whereas, in truth and in fact, the price is so far in excess of the usual selling price of "The Standard Reference Work" and the "Standard Loose-Leaf Extension Service" as to constitute a full and fair price for all the books sold or offered to be sold to the customer.

PAR. 6. Respondent, in the course of its business, has represented that the above-mentioned publications sold by it are bound in "Rich Maroon Levant." The word "Levant," as applicable to the binding of books, means, to the trade and the purchasing public, a leather prepared from the hides of goats or other animals. Respondent's publications are not bound in leather, but in a material made from cotton and other fabrics in imitation of leather.

PAR. 7. Respondent, in the course and conduct of its business, and as an inducement to the purchase of its publications, offers to its prospective customers "Honorary Membership" in the "Standard Education Society" and accepts written applications therefor on printed forms prepared by respondent. In making such offers, and accepting such applications, respondent represents to its prospective customers that such honorary membership entitles the customer to certain emoluments and benefits, and such representations have a tendency and capacity to induce prospective customers to purchase respondent's publications, in the belief that some additional benefit is to accrue to them by reason of being an honorary member of the Standard Education Society. These representations are misleading, in that there is no such thing as an honorary membership in the Standard Education Society, and that by the terms and scheme of its corporate organization, such memberships are not permissible.

PAR. 8. Respondent, in the course and conduct of its business, advertises and has advertised that its publication designated as "The Standard Reference Work" has been "officially adopted by twenty-four States," whereas, in truth and in fact, said publication has never been officially adopted by any State, but has been approved for use in public schools by various State Departments of Education.

PAR. 9. The representations set forth in paragraphs 3, 4, 5, 6, 7, and 8 were and are misleading, and each of them had and has the tendency and capacity to deceive the purchasing public and to induce them to purchase respondent's publications, in reliance upon the truth of such representations.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the amended complaint of the Commission, the answer thereto, and the agreed statement as to the facts made and filed herein, in lieu of the testimony in evidence, and the Commission having made its findings as to the facts and its conclusions, that the respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Standard Education Society, a corporation, its officers, agents and employees cease and desist from:

(1) Representing to customers or prospective customers that the usual prices which it receives or has received for any book, set of books, or any publication, or any combination of books, sets of books, or publications, are greater than the price at which they are offered to such customers or prospective customers, when such is not the fact.

(2) Representing that any book or publication offered for sale by it is bound in "rich maroon levant," or other leather, when such is not the fact.

(3) Offering to its prospective customers honorary memberships in the Standard Education Society.

(4) Advertising that the publication designated as "Standard Reference Work" has been officially adopted by twenty-four (24) States, or by any State.

It is further ordered, That respondent Standard Education Society, shall within sixty (60) days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detal the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

HYGIENIC LABORATORIES.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 959—November 14, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a preparation, called "Kolor-Bak," which it alleged would restore the original color to grey hair, and in its advertisements offered free for a trial demonstration; gave to prospective customers sending it the coupons from its advertisement calling for its "Special Free Trial Offer" only the privilege of purchasing a definite quantity of such preparation, upon the condition that if it should fail to satisfy the customers, then the purchase price would be returned:

Held, That such deceptive solicitation of patronage, under the circumstances set forth, constituted an unfair method of competition.

Mr. W. T. Roberts for the Commission.

Mr. Harris F. Williams of Chicago, Ill., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Hygienic Laboratories, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Hygienic Laboratories, is a corporation incorporated under the laws of the State of Illinois; its officers are as follows: Albert Leib, president, Edward A. Hochbaum, secretary, treasurer and general manager; the office of the corporation is located at 402 South Peoria Avenue in the city of Chicago, and its factory is located at 3334 West 38th Street in said city. The respondent is engaged in manufacturing, selling and distributing a hair color restorer known as "KOLOR-BAK." Respondent, through its officers, causes the product hereinbefore referred to, to be sold and transported from the city of Chicago, State of Illinois, to purchasers through and into various other States of

the United States. In the course of business above referred to the respondent has been and now is in competition with other individuals, partnerships and corporations engaged in the manufacture and sale in interstate commerce of other products sold and used for the purpose of restoring natural color to the hair.

PAR. 2. Respondent sells and distributes the said product known as "KOLOR-BAK" through the various States of the United States by mail orders and employs no traveling salesmen and very few retail drug stores handle this product and to facilitate the sale of said product respondent does a large amount of advertising in newspapers and other periodicals wherein it sets forth the supposed merits of this product offering a trial of the same free of charge.

PAR. 3. The advertisements so published by said respondent contain language substantially as follows: "We invite every reader who has gray hair, who suffers from itching scalp, dandruff or falling hair, to prove 'KOLOR-BAK' without risking a penny. Don't put this off a day; send the coupon which not only entitles you to receive the free trial privilege, but brings our valuable book on treatment of the hair free." The coupon states: "Please send me your free trial offer on 'KOLOR-BAK' and your free book on treatment of the hair and scalp." When this coupon is received by the respondent a circular letter and booklet is sent to the party mailing this coupon, which letter states: "I am very glad indeed to comply with your request for our booklet, which you will find enclosed. Our free trial offer of results or money refunded will be found explained in the booklet. The free trial offer, as the attached booklet will show, consists of a guarantee that five bottles of 'KOLOR-BAK' will restore the natural color or the $7.50 paid therefor in advance will be returned."

There is no offer on the part of respondent to give to the person sending in these coupons any free trial of the preparation known as "KOLOR-BAK" except as set out in said booklet, which proposition amounts to saying that if the preparation is applied or used according to directions and does not restore the color of hair, the $7.50 paid therefor in advance will be returned.

The aforesaid advertisements are misleading for the reason that respondent claims that a large number of people does not use the "KOLOR-BAK" according to instructions and are therefore not entitled to have the money paid by them refunded. Respondent claims that, in accordance with the proposals made in such advertisements, it refunds the money paid by its customers to the extent of one or two percent of the total number purchasing this product, although a much larger number of such purchasers make application

to have their money refunded. Respondent refuses to refund the same, alleging that the preparation has not been used according to instructions and that such purchasers are therefore not entitled to have their money refunded.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Hygienic Laboratories, charging it with the use of unfair methods of competition in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a stipulation as to the facts was agreed upon by counsel for the Commission and counsel for respondent, wherein it was agreed that the statement of facts therein contained may be taken as the facts of this proceeding, in lieu of testimony, in support of the charges stated in the complaint or in opposition thereto. And thereupon this proceeding came on for final hearing, and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Hygienic Laboratories, is a corporation organized under the laws of the State of Illinois with principal office and place of business at Chicago in said State, and at the time of the issuance of the complaint herein, prior thereto and since said date, has been engaged in the business of manufacturing and selling toilet preparations including a preparation which it has designated as "Kolor-Bak," for which the claim is made by respondent, that such preparation will restore the original color to gray hair, and the respondent has caused quantities of such preparation so sold by it, to be transported from the State of Illinois, through and into other States of the United States, for deliveries to purchasers thereof, and at all times during the course of such business respondent has been in competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent now markets about one-half of its output through retail drug stores and the drug sundries departments of department stores, and the balance of its production is marketed direct to the consuming public upon mail orders. That prior to the issuance of the complaint herein, respondent marketed the greater portion of its product direct to the consuming public; that the sales plan of respondent was then substantially as follows: Respondent caused advertisements to be inserted in newspapers and other publications of nation-wide circulation, which advertisements contained a coupon which could be filled out with the name and address of anyone who desired to avail himself of the offer contained in said advertisement, and returned to the respondent. That the offer contained in such advertisements was described as "A Special Free Trial Offer," concerning the preparation designated by respondent as "Kolor-Bak," followed by the statement that by filling out and returning the coupon, anyone would be entitled to receive such free trial privilege. Upon receipt of the coupons respondents would then send to the persons named therein a letter and enclose therewith a booklet wherein the terms of the so-called "Special Free Trial Offer" were set out, which required the customer to send to respondent $7.50 in payment of six bottles of "Kolor-Bak," upon the condition that if the preparation failed to fully satisfy the customer after using the six bottles as directed, then the $7.50 would be returned promptly, without argument, the customer to be sole judge as to whether he was satisfied.

PAR. 3. That prior to the issuance of the complaint herein respondent received annually, approximately 100,000 of the coupons described in paragraph 2 hereof and of the persons named in such coupons, approximately 20,000 accepted the terms of the offer contained in the booklet sent them by respondent as set out in paragraph 2 hereof.

PAR. 4. That when a customer had used a quantity of "Kolor-Bak" purchased pursuant to the terms of the offer described in paragraph 2 hereof, and applied to respondent for a refund of the purchase price upon the ground that he was not satisfied with the results produced, respondent would send him a questionnaire to be filled out and returned to respondent for the expressed purpose of ascertaining whether the customer had used the preparation in accordance with the directions and in cases wherein respondent claimed that the questionnaire as filled out, showed that the customers had not used the preparation according to directions, respondent would then claim exemption from liability upon the refund feature of the offer and would offer a special "Kolor-Bak" in lieu

of a refund. That in the course of correspondence incident to ascertaining whether customers applying for a refund had used the preparation according to directions, a number of such customers failed to pursue further their claim for a refund and were not heard from again and no refund was given them. However, a cash refund was given in every case where claim was further pursued, under any circumstances.

PAR. 5. That about the time of the issuance of the complaint herein or shortly prior thereto respondent put in operation a plan under which customers who applied for a refund of the purchase price of "Kolor-Bak" used by them were given the option, in certain cases, of accepting, in lieu of the cash refund, six bottles of "Kolor-Bak" which respondent claimed was of special strength and suitable for stubborn cases which would not yield to treatment by "Kolor-Bak" suitable to the usual run of cases. That in the past year, of those who applied to respondent for a refund of the purchase price of "Kolor-Bak" used by them about three-fifths of the whole number accepted the six bottles of "Kolor-Bak" which respondent represented to be of special strength, and the remaining two-fifths, except those who abandoned their claim for a refund, insisted upon and received the cash refund which aggregated in the year about $4,200.

CONCLUSION.

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer thereto and a stipulation as to the facts filed herein, and the Commission having made its report in which it stated its findings as to the facts and its conclusion that the respondent, Hygienic Laboratories, has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Hygienic Laboratories, its officers, agents, representatives, servants and employees, do cease and desist from:

Stating, in advertisements which it may cause to be published, or in advertising matter which it may cause to be distributed to the public, that it will give to anyone desiring it or applying for it, a "Special Free Trial Offer," or a "Free Trial Offer" of a preparation manufactured and sold by respondent and for which the claim is made by respondent, that such preparation will restore the original color to gray hair, and then requiring those who apply for the so-called "Free Trial" privilege, to purchase a quantity of such preparation upon the condition that if the preparation should fail to satisfy the customer, then the purchase price will be returned, thereby affording customers only what is known commercially, as a conditional "money back offer" and not a free trial offer.

It is further ordered, That the respondent, Hygienic Laboratories, shall within thirty (30) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

BROADWAY KNITTING COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 986—November 14, 1923.

SYLLABUS.

Where a corporation engaged in the sale of knitted underwear, sweaters, blankets, overcoats and other similar merchandise direct to consumers through traveling agents or solicitors, and neither owning, operating, nor controlling any knitting machinery, knitting mill, or factory; used its corporate name "Broadway Knitting Co.", and prominently displayed the same in its advertisements, order blanks, package labels and other stationery, and so labeled the garments sold by it; thereby misleading the trade and public into believing it to be the manufacturer of the products sold by it:

Held, That such misleading use of corporate name, under the circumstances set forth, constituted an unfair method of competition.

Mr. G. Ed. Rowland for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Broadway Knitting Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is now and has been for over five years last past a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its principal place of business at Salt Lake City, in said State, and during said period of time has been and now is engaged in the business of selling direct to customers located chiefly in the States of the United States other than Utah, knit and woven underwear, sweaters, coats, shirts, blankets and similar merchandise, and in shipping or causing to be shipped said merchandise, when sold, from the State of Utah to its said customers at various points in States of the United States other than Utah. In the course and conduct of its said business, respondent is and has been during all the times mentioned in this complaint, in competition with others similarly engaged.

PAR. 2. Respondent, in the course and conduct of its said business, uses its corporate name "Broadway Knitting Company", which name it has and does now prominently display in its newspaper advertisements, order blanks, package labels, and other stationery and literature. It also has used and does now use order blanks to be signed by prospective customers on which are printed the words "Woolen goods made to order." Respondent solicits its business through its agents who travel throughout the various States of the United States other than Utah and solicit and obtain orders direct from users and consumers for the articles sold by respondent; and said agents, in addition to circulating respondent's literature as above set forth, orally represent to prospective customers that the respondent is the manufacturer of the goods offered for sale.

PAR. 3. Respondent has at no time during its existence, owned, controlled, or operated, and does not now own, control, or operate, any knitting factory or other place where knit or woven goods are made or manufactured and did not and does not now manufacture any of the articles sold or offered for sale by it, but now fills the orders received by it from its customers, from merchandise purchased by it from the stocks of manufacturers and others.

PAR. 4. The use by respondent of the corporate name "Broadway Knitting Company" in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the purchasing public into the mistaken belief that the respondent owns or operates a factory in which is manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying direct from the manufacturer, thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provision of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent Broadway Knitting Company charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondent having entered its appearance and filed its answer therein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

And therefore this proceeding came on for final hearing and counsel for the Commission having submitted a brief and the defendant having notified the Commission of his intention not to file any brief and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is now and has been since August, 1918, a corporation duly organized and existing under the laws of the State of Utah, with its principal place of business in Salt Lake City in said State, and during said period of time has been and now is engaged in the business of selling direct to consumers located chiefly in the States of the United States other than Utah, knit underwear, sweaters, blankets, overcoats and similar merchandise, and in shipping or causing to be shipped said merchandise from the State of Utah to its customers at various points in States of the United States other than Utah. In the course and conduct of its said business respondent is and has been during all the time mentioned in competition with others similarly engaged.

PAR. 2. Respondent in the course and conduct of its business uses its corporate name "Broadway Knitting Company," which name it has and does now prominently display in its advertisements, order blanks, package labels and other stationery. It also has used and now uses order blanks to be signed by the prospective customers on which are printed the words "Woolen goods made to order." Respondent solicits its business through traveling agents or solicitors who travel throughout various States of the United States, and solicit and obtain orders direct from users and customers for the articles sold by respondent, and in soliciting said business and in taking orders for articles sold, said agents use the stationery and order blanks of the respondent. In some instances respondent has represented to customers that it manufactures the articles which it sells, and its salesmen are instructed not to make any statement regarding where or by whom the articles which it sells are made unless specifically asked by the customer; if no question is asked, the articles are sold as being respondent's goods. Respondent does not know

whether its salesmen represent to the customers that the articles are made by the respondent.

PAR. 3. It is only occasionally that respondent has to have made to order any of the goods which it sells. Of the knitted goods sold by respondent, not over 10% of these articles are made to individual measure, and of the other goods sold by respondent, it is only an exceptional case where it is necessary to have the article made to order from measurements by customers. Respondent buys large quantities of the various articles which it sells at the beginning of the season in stock sizes and fills its orders from this stock. Respondent purchases the knitted underwear, sweaters and hosiery which it sells from knit goods manufacturers in the State of Utah, and some eastern manufacturers, and its leather vests from manufacturers located in St. Paul, Minn. In cases where it is necessary, the measurements of the customer are taken and the mills above mentioned manufacture the articles to conform to such measurements. Respondent puts a label on practically all of the sweaters, leather vests and overcoats which it sells, and on some of the underwear bearing the words "Broadway Knitting Company."

PAR. 4. The respondent has at no time during its existence owned, operated or controlled, and does not now own, operate or control any knitting machinery, knitting mill or factory, and does not now manufacture, and has never during its existence, manufactured any of the articles sold or offered for sale by it.

PAR. 5. The use by a company of a word which indicates that it is engaged in manufacturing is an advantage to the company so using. The use by respondent of the name "Broadway Knitting Company," as set forth in the complaint herein, creates the impression in the minds of the trade and public that the company is engaged in the process of manufacturing certain of the articles which it sells by the method of knitting, and leads the public to believe that said respondent does actually own or operate a mill or factory in which articles sold by it are manufactured.

CONCLUSION.

That the acts, practices and activities of respondent as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Broadway Knitting Company, cease and desist from doing business under the name and style of Broadway Knitting Company or any other corporate name which includes the word "Knitting" unless and until such respondent actually owns or operates a factory or mills in which it manufactures the knitted articles which it sells.

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

FEDERAL TRADE COMMISSION

v.

H. MAILENDER, TRADING UNDER THE UNINCORPORATED NAMES AND STYLES OF "M. RIDER & COMPANY," "QUEEN CITY SALVAGE COMPANY," "ARMY GOODS HEADQUARTERS," "ARMY-NAVY STORE," AND "ARMY GOODS STORE."

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1011—November 14, 1923.

SYLLABUS.

Where an individual engaged as "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store" in the sale to the public in various cities of Army and Navy surplus supplies and also of ordinary commercial merchandise, but professedly as a dealer in the former, which he represented to the public as having been purchased from the Army and Navy, made in accordance with Government specifications, and of high quality but sold at comparatively low prices due to the necessity of reducing the large surplus thereof;

(*a*) Advertised said supplies and merchandise together without adequately disclosing that the latter was not in fact part and parcel of the former, with the capacity and tendency thereby to mislead and deceive the purchasing public into believing such ordinary commercial merchandise to be part of the aforesaid Army and Navy surplus supplies and to induce the purchase thereof in such belief;

(*b*) Advertised, described, labeled and sold as "U. S. Marine Paint" and "U. S. Quality Paint" a paint neither made for the Government nor in accordance with its specifications, nor constituting Army or Navy surplus, with the effect of misleading and deceiving purchasers thereof and the public into believing said paint to have been connected in some way with the Government and to be of high quality but sold at comparatively low prices made possible by the Government's necessity for disposing of large surplus stocks accumulated during the war, and of thus securing an undue and unfair preference for said paint in the trade and among the purchasing public:

Held, That such false and misleading advertising, and such misbranding and mislabeling, under the circumstances set forth, constituted unfair methods of competition.

Mr. W. A. Sweet for the Commission.

Mr. Leonard H. Freiberg of Cincinnati, Ohio, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To

create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that H. Mailender, trading under the unincorporated names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store," hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a person engaged in the business of purchasing, selling and distributing men's work and dress clothing, army goods, surplus army and navy property and other goods, wares and merchandise, having his principal office and place of business at 113 Sycamore Street, in the City of Cincinnati, and State of Ohio, and operating as a part of his said business branch stores at Indianapolis, Indiana; Fort Wayne, Indiana; and Huntington, West Virginia. He conducts, and at all times hereinafter mentioned has conducted, his said business as follows: The said business is carried on and conducted by respondent under the unincorporated trade names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store." He purchases the said commodities in which he deals from manufacturers and other sellers at points in the various States of the United States, and causes said commodities to be transported from said points of purchase in commerce among the several States to his said several places of business and he also causes such commodities to be shipped direct from said points of purchase to his customers located in States other than the States in which such respective shipments originate. Respondent causes advertisements to be published in newspapers of general circulation throughout the United States, and he also sends circulars, letters and other literature from his said places of business to his customers and prospective customers throughout the various States. In and by means of said newspaper advertisements, circulars, letters, and other literature he describes and offers for sale the said commodities in which he deals, and through such means he receives orders for the purchase of said commodities from customers located throughout the various States, particularly the States of Ohio, Indiana, West Virginia, Tennessee and the States adjacent thereto. Pursuant to the said orders received by him, respondent causes the commodities so sold to be transported from his said several places of business in the States of Ohio, Indiana and West Virginia, through and into various States other than the States in which such respective shipments originate to the

purchasers thereof. In so carrying on and conducting his said business respondent is, and at all times herein mentioned has been, engaged in interstate commerce among the several States and has been and is in direct, active competition with other persons, partnerships and corporations similarly engaged in commerce among the several States, and with the trade generally.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent advertises and holds himself out to the public as a dealer in army goods and war surplus property and he represents to the public that such merchandise so dealt in by him (a) are surplus army and navy supplies, (b) were purchased from the United States Army or United States Navy, (c) were made in accordance with specifications of the United States Government, and (d) are of high quality, but are being sold at low prices because of the necessity of reducing the large quantity of surplus supplies of the Army and Navy of the United States, manufactured for the use of the Army and Navy of the United States, whereas in truth and in fact, many of the articles dealt in and sold by respondent as aforesaid under said representation are ordinary commercial merchandise and are not surplus army or navy supplies and such commodities were not purchased from or manufactured for the United States Army or Navy, nor were said commodities made in accordance with specifications of the United States Government. The said representations as alleged above in this paragraph are false and misleading and have the capacity and tendency to mislead and deceive the purchasing public into the belief that said representations were and are true in fact, and thereby to cause the purchasers of said ordinary commercial merchandise so dealt in by respondent to purchase same in that belief.

PAR. 3. That respondent, in the course and conduct of his said business and trading under the names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store," as described in paragraph 1 hereof, has sold and distributed for more than one year last past and is still selling and distributing to purchasers in the various States of the United States a certain paint, which is labelled "U. S. Marine Paint, One Gallon, U. S. Standard," and respondent causes said paint to be advertised, described and offered for sale through advertisements published in newspapers of general circulation throughout the United States and in circulars, letters and other literature which he sends to customers and prospective customers throughout the various States of the United States. In said newspaper advertisements, circulars, letters and other litera-

ture respondent describes and represents said paint as "U. S. Marine Paint" and as "U. S. Quality Paint." Said paint so represented and sold is obtained by respondent from the Forest City Paint & Varnish Company, division of the Glidden Company of Cleveland, Ohio, and other manufacturers. The said paint was not manufactured for the United States Navy or for any other branch of the United States Government, and said paint is not manufactured in accordance with specifications of the Government of the United States, nor is said paint surplus army or navy stock. The advertising, describing, labeling and selling of said paint as aforesaid as "U. S. Marine Paint" and "U. S. Quality Paint," by respondent trading as aforesaid under the unincorporated trade names and styles of "Queen City Salvage Company," "Army-Navy Store," "Army Goods Store" and "Army Goods Headquarters," is calculated, has the capacity and tendency, to, and did, mislead and deceive the purchasers of said paint and the public into the belief that said paint is United States Navy surplus stock, or was made for the United States Navy, or made according to specifications of the United States Government, and that said paint is of high quality, but offered for sale and sold at a low price because of the necessity of reducing the large surplus stocks of supplies of the United States Navy, and purchasers of said paint were and are thereby induced to purchase same in that belief.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent H. Mailender (whose full name is Harry Mailender), trading under the unincorporated names and styles of "M. Rider & Company," "Queen City Salvage Company," "Army Goods Headquarters," "Army-Navy Store" and "Army Goods Store," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance by his attorney and filed his answer herein, an agreed statement of facts was made, executed and filed in this proceeding in which it is stipulated and

agreed by and between respondent and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Commission, and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto; and that said Commission may proceed further upon said complaint to make its report in said proceeding stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding without hearing oral arguments.

And the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a person engaged in the business of purchasing, selling and distributing men's work and dress clothing, Army goods, surplus Army and Navy property and other goods, wares and merchandise, having his principal office and place of business at 113 Sycamore Street, in the City of Cincinnati, and State of Ohio, and operating as a part of his said business branch stores at Indianapolis, Indiana; Fort Wayne, Indiana; Huntington, West Virginia; Logan, West Virginia; and Washington Court House, Ohio. He conducts, and at all times hereinafter mentioned has conducted, his said business as follows: The said business is carried on and conducted by respondent under the unincorporated trade names and styles of "M. Rider & Company" and "Queen City Salvage Company." He purchases the said commodities in which he deals from manufacturers and other sellers at points in the various States of the United States, and causes said commodities to be transported from said points of purchase in commerce among the several States to his said several places of business and he also causes such commodities to be shipped direct from said points of purchase to his customers located in States other than the States in which such respective shipments originate. Respondent causes advertisements to be published in newspapers of general circulation throughout the United States, and he also sends circulars, letters and other literature from his said places of business to his customers and prospective customers throughout various States. In and by means of said newspaper advertisements, circulars, letters and other literature he describes and offers for sale the said commodities in which he deals, and through such means he receives orders for the purchase of said commodities from customers located throughout the various States, particularly the States of Ohio, Indiana, West Virginia, Tennessee

and the States adjacent thereto. Pursuant to the said orders received by him, respondent causes the commodities so sold to be transported from his said several places of business in the States of Ohio, Indiana and West Virginia, through and into various States other than the States in which such respective shipments originate to the purchasers thereof. In so carrying on and conducting his said business respondent is, and at all times herein mentioned has been, engaged in interstate commerce among the several States and has been, and is, in direct, active competition with other persons, partnerships and corporations similarly engaged in commerce among the several States, and with the trade generally.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent advertises his said several places of business at Indianapolis, Indiana; Fort Wayne, Indiana; Huntington, West Virginia; Logan, West Virginia; and Washington Court House, Ohio, as the "Army Goods Headquarters," "Army-Navy Store," and "Army Goods Store," and holds himself out to the public as a dealer in Army goods and War surplus property; and he represents to the public, and causes the public to believe, that such goods, wares, and merchandise so dealt in by him (a) are surplus Army and Navy supplies, (b) were purchased from the United States Army or United States Navy, (c) were made in accordance with specifications of the United States Government, and (d) are of high quality and are being sold at comparatively low prices, which low prices are possible because of the necessity of reducing the large quantity of surplus supplies of the Army and Navy of the United States. The respondent deals in general merchandise in addition to Army and Navy goods and sells such merchandise in his several places of business referred to herein, and offers such general merchandise for sale in advertisements issued by him, in which advertisements he also offers for sale the Army and Navy goods and war surplus property in which he deals, copies of which advertisements are hereto annexed and made a part hereof.[1] Such general merchandise is not surplus Army and Navy supplies and was not purchased from or manufactured for the United States Army or Navy, nor made in accordance with specifications of the United States Government. Respondent in carrying on and conducting his said business under the foregoing representations failed and neglected to adequately disclose to the purchasing public that the said ordinary commercial articles sold as aforesaid were not in fact part and parcel of said surplus Army or Navy supplies. The said representations, under the circumstances described and set forth above

[1] Not printed.

in this paragraph, are misleading and deceptive and have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said ordinary commercial merchandise so offered and sold by respondent is part and parcel of said surplus Army or Navy supplies dealt in by respondent, and thereby cause purchasers of said ordinary commercial merchandise to purchase same as and for Army or Navy surplus supplies and in the belief that said ordinary commercial merchandise was purchased from, or manufactured for, the United States Army or Navy, and/or were made in accordance with specifications of the United States Government.

PAR. 3. The respondent in the course and conduct of his said business as described in paragraph 1 hereof, and trading under the names and styles of "M. Rider & Company" and "Queen City Salvage Company," and advertising and describing his said several places of business as the "Army Goods Headquarters," "Army-Navy Store" and "Army Goods Store," as set forth in paragraph 2 hereof, sells and distributes, and has sold and distributed for more than one year last past, to purchasers in various States of the United States, a certain paint which is labeled and branded "U. S. Marine Paint, One Gallon, U. S. Standard," and respondent causes said paint to be advertised, described and offered for sale through advertisements published in newspapers of general circulation throughout the United States, and in circulars, letters and other literature which he sends to customers and prospective customers throughout various States of the United States. In the newspaper advertisements, circulars, letters and other literature respondent describes and represents said paint as "U. S. Marine Paint and as U. S. Quality Paint." The said paint was not manufactured for the United States Navy or for any other branch of the United States Government, and said paint is not manufactured in accordance with specifications of the Government of the United States, nor is said paint surplus Army or Navy stock. The advertising, describing, labeling and selling of said paint by respondent, as aforesaid, as "U. S. Marine Paint" and "U. S. Quality Paint" has the capacity and tendency to, and did, mislead and deceive purchasers of said paint and the public into the belief that said paint is United States Government surplus stock, and/or was made for the United States Navy, and/or made according to specifications of the United States Government; and that said paint is of high quality, but is offered for sale and sold at comparatively low prices made possible by the necessity of the Government's disposing of large surplus stock accumulated by it during the World War; thus securing in the trade and among the purchasing public an undue and unfair preference for said paint.

CONCLUSION.

The practices of said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent H. Mailender (whose full name is Harry Mailender), trading under the unincorporated names and styles of "M. Rider & Company" and "Queen City Salvage Company," his agents, representatives, servants and employees, cease and desist from directly or indirectly:

(1) Selling or offering for sale in interstate commerce, in places of business designated and described by him as "Army Goods Headquarters," "Army-Navy Stores" or "Army Goods Store," ordinary commercial merchandise or commodities as surplus Army and Navy supplies or Government supplies, when, in truth and in fact, such merchandise or commodities were not purchased from or manufactured by or for the United States Government, or made in accordance with specifications or requirements of the United States Government;

(2) Advertising or describing in newspapers, circulars or other literature, ordinary commercial merchandise or commodities as surplus Army and Navy supplies, when, in truth and in fact, such merchandise and commodities were not purchased from or manufactured for or by the United States Government, or made in accordance with specifications or requirements of the United States Government;

(3) Employing or using on labels or as brands for paint manufactured, sold or offered for sale by him in interstate

commerce, or upon the containers in which said paint is delivered to purchasers, the words "U. S. Marine Paint, One Gallon U. S. Standard," unless, in truth and in fact, said paint was purchased from or manufactured by or for the United States Government, or prepared in accordance with specifications or requirements of the United States Government;

(4) Using or displaying in advertising matter, circulars or other literature used in connection with the sale of paint manufactured, sold or offered for sale by him in interstate commerce, the words "U. S. Marine Paint" or "U. S. Quality Paint," unless, in truth and in fact, said paint was purchased from or manufactured by or for the United States Government, or prepared in accordance with specifications or requirements of the United States Government.

It is further ordered, That the respondent within thirty (30) days from the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

H. O. GREENBAUM, TRADING AS TECHNICAL COLOR & CHEMICAL WORKS, AND VICTORY SHELLAC WORKS.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1056—November 14, 1923.

SYLLABUS.

Where an individual engaged in the manufacture and sale of a product which as made at times contained a small percentage of pure shellac gum and in some instances no shellac gum whatever,

(*a*) Labeled, advertised, and sold the same under the names "Red Devil Shellac" and "Victory White Shellac"; and

(*b*) Represented on the labels of the containers that the contents were guaranteed to be pure shellac dissolved in alcohol, without indicating the presence of other substances;

With the capacity, tendency and effect of deceiving a substantial part of the purchasing public with reference to the composition of said product and of inducing purchases in such mistaken belief:

Held, That such misbranding or mislabeling, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. W. A. Sweet for the Commission.

Mr. J. T. Watkins of Washington, D. C., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that H. O. Greenbaum, trading as Technical Color & Chemical Works, and Victory Shellac Works, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the names of Technical Color & Chemical Works and Victory Shellac Works, with its plant and general office located at 382 Hudson St., New York City, state of New York. He is, and at all times hereinafter mentioned has been engaged in the business of manufacturing,

selling and distributing paint, varnishes and shellacs and substitutes for shellac to painters, jobbers, dealers and the public generally throughout the United States. In the course and conduct of his business respondent causes his said products, when sold, to be transported from the state of New York to, into and through other states of the United States and the District of Columbia to the purchasers thereof. At all times hereinafter mentioned said respondent is and has been in competition with other persons, partnerships and corporations engaged in a similar business in interstate commerce.

PAR. 2. Respondent in the course and conduct of his said business has caused, for more than one year last past and still causes to be manufactured and sold to jobbers, dealers and the purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a product composed of a small percentage of pure shellac gum and in some instances no shellac gum whatever, labeled, branded and advertised as "Red Devil Shellac" and "Victory White Shellac," representing in the labels on the containers of said products that the contents thereof are guaranteed to be pure shellac dissolved in denatured alcohol without indicating in any way whatever on such labels and in such advertisements that said product contained any gum other than pure shellac gum. The said labels and advertisements of said product by respondent, as aforesaid, are false and misleading and have the capacity and tendency to mislead and deceive the said purchasers thereof, the trade and the purchasing public into the belief that the product so labeled, branded and advertised is composed only of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase said product in that belief. Shellac or shellac varnish as commercially known and sold to jobbers, dealers and the purchasing public is a product composed solely of genuine shellac gum dissolved in alcohol and is so understood by said jobbers, dealers and the purchasing public.

PAR. 3. There are engaged in selling in commerce among the several States of the United States a large number of manufacturers and distributors of varnish composed only of genuine shellac gum, cut in alcohol, who advertise, label and sell the same under the name of "Shellac" and also many manufacturers and distributors of shellac substitutes who do not advertise, brand or label said shellac substitutes as "Shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum cut in alcohol.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and of respondent's competitors and

constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, H. O. Greenbaum, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered his appearance and filed an answer herein, and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of or in opposition to the same, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is an individual trading under the name of Technical Color & Chemical Works and Victory Shellac Works, with his plant and general office located at 382 Hudson St., New York City, State of New York. He is, and at all times hereinafter mentioned has been, engaged in the business of manufacturing, selling and distributing paint, varnishes and shellacs and substitutes for shellac to painters, jobbers, dealers, and the public generally throughout the United States. In the course and conduct of his business, respondent causes his said products, when sold, to be transported from the State of New York to, into, and through other states of the United States, and the District of Columbia to the purchasers thereof. At all times hereinafter mentioned said respondent is and has been in competition with other persons, partnerships, and corporations engaged in a similar business in interstate commerce.

PAR. 2. Shellac or shellac varnish as commercially known and sold to jobbers, dealers, and the purchasing public is a product composed solely of genuine shellac gum dissolved in alcohol and is so understood by said jobbers, dealers, and the purchasing public.

PAR. 3. There are engaged in selling in commerce among the several states of the United States, a large number of manufacturers and distributors of varnish composed only of genuine shellac gum cut in alcohol, who advertise, label, and sell the same under the name of "shellac," and also many manufacturers and distributors of shellac substitutes who do not advertise, brand, or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum cut in alcohol.

PAR. 4. Respondent, in the course and conduct of his said business, in the month of September, 1922, and for some time prior thereto, caused to be manufactured and sold to jobbers, dealers, and the purchasing public throughout the United States by means of traveling salesmen, mail orders, and otherwise, a product composed of a small percentage of pure shellac gum and, in some instances, no shellac gum whatever, labelled, branded, and advertised as "Red Devil Shellac" and "Victory White Shellac," representing in the labels on the containers of said products that the contents thereof are guaranteed to be pure shellac dissolved in denatured alcohol without indicating in any way whatever on such labels and in such advertisements that said product contained any gum other than pure shellac gum.

PAR. 5. The brands, labels, and advertisements containing the words "Red Devil Shellac" and "Victory White Shellac," used by the respondent in the sale of the product manufactured, sold and shipped by him and upon the containers thereof, as set forth in the foregoing findings, are false and have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such product so sold, labeled, branded and advertised by the respondent is composed solely of genuine shellac gum dissolved in alcohol and to induce such purchasers to purchase same in that belief.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the

respondent, and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, H. O. Greenbaum, trading under the names and styles of Technical Color & Chemical Works and Victory Shellac Works, his agents, representatives, servants, and employees, cease and desist:

(1) From, directly or indirectly, employing or using on labels, or as brands for varnish not composed wholly, one hundred per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "Red Devil Shellac," "Victory White Shellac," or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed, with the percentages of all such substances, ingredients, or gums therein used, clearly stated upon the label, brand or upon the containers, (e. g. "Shellac Substitute", or "Imitation Shellac", to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of his products in interstate commerce, except when such products contain one hundred per cent shellac gum cut in alcohol, the words "Red Devil Shellac", "Victory White Shellac", or the word "Shellac" alone or in combination with any other word or words, unless accompanied by a word or words clearly and distinctly setting forth the substances, ingredients, or gums of which the varnish is composed, with the percentages of all such substances, ingredients, or gums therein used clearly stated (e. g. "Shellac Substitute" or "Imitation Shellac", to be followed by a statement setting forth the percentages of ingredients or gums therein used).

It is further ordered, That the respondent shall file with the Federal Trade Commission, within sixty (60) days from the date of this order, his report in writing, stating the manner and form in which this order has been conformed to, and shall attach to such report two (2) copies of all circulars, advertisements, devices, or labels distributed or displayed to the public by the respondent in connection with the sale of his product in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

AMERICAN TURPENTINE COMPANY, A CORPORATION, TRADING UNDER THE NAME AND STYLE OF NORTH AMERICAN FIBRE PRODUCTS COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1075—November 14, 1923.

SYLLABUS.

Where a corporation dealing in roofing paints and other products under the brand name "HORNEBLENDE"; under the caption "Again HORNBLENDE Wins in Competitive Test to Secure the Business from the State of Ohio" set forth in its advertisements what purported to be, but was not, a true copy of the results of a comparative chemical analysis of one of its own products and of a competitor's product by the Ohio State Chemist, as communicated by him to the secretary of a City Board of Purchase, the fact being that said advertisement did not truthfully reproduce said letter, but contained a false and misleading statement; with the effect of misleading and deceiving the purchasers of its products and with the capacity and tendency to injure said competitor and render it less able to compete:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. M. Markham Flannery for the Commission.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that American Turpentine Company, a corporation, trading as North American Fibre Products Company, and more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Turpentine Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of purchasing in wholesale quantities, paints, varnishes, enamels, roofing material, roofing paint and similar products, and in the conduct of its business as a wholesaler or jobber has adopted

and utilized the trade name North American Fibre Products Company in the sale of its said products in interstate and foreign commerce in and throughout the United States and portions of Canada, causing its products when so sold to be transported from the State of Ohio, to purchasers located in other States of the United States, and provinces of Canada, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said products sold by said respondent, between and among the various States of the United States, and the United States and Provinces of Canada. In the course of its business, respondent was at all times hereinafter mentioned and still is, in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate and foreign commerce.

PAR. 2. That said respondent, trading as aforesaid, in the course and conduct of its business for more than one year last past has printed or caused to be printed, circulated and published in interstate and foreign commerce, an advertisement of and concerning its products sold under the trade name or brand "Horneblende," and the products of a competitor known to the trade or sold under the trade name or brand "Arco," which said advertisement was in the following words and figures, to wit:

Again HORNEBLENDE Wins in Competitive Test to Secure the Business from the State of Ohio!

HORNEBLENDE WON

MAY 7, 1919

Mr. Louis J. Guthke, Secretary,
City Board of Purchase
City of Columbus, Ohio.

DEAR SIR:

The following are the results of analyses of two samples of roof paint from the Fire Department, marked Sample No. 1 and No. 2:

	Atlantic Refining Co. "Arco" Sample No. 1	Horne-blende Sample No. 2
Soluble in Carbon Bisulphide	82.54%	59.23%
Insoluble in Carbon Bisulphide	17.46%	40.77%
Flash Test (Open Cup)	178° F.	270° F.
Fire Test (Open Cup)	200° F.	340° F.

Sample No. 1

Material is practically insoluble in gasoline. Insoluble portion is sand and free carbon. Material has a tarry odor. When heated to about 150° F. it boils and froths badly. Becomes soft.

Sample No. 2

Insoluble material appears to be nearly all asbestos fibre with a solution of kauri gum. The odor resembles that of linseed oil and turpentine, similar to paint, upon heating, no softening appears to take place, probably due to large amount asbestos present. Very soluble in gasoline.

Yours very truly,

WATER PURIFICATION WORKS
By CHARLES P. HOOVER
Chemist in Charge.

This is an exact copy of letter received from Chas. P. Hoover, Chemist in charge of the State of Ohio.

That the advertisement above set forth was printed, published and circulated as aforesaid and represented by said respondent to include "an exact copy of letter received from Chas. P. Hoover, Chemist in charge of the State of Ohio," when in truth and in fact said letter set forth under the above caption and included in said advertisement is not an exact or true copy of the letter as written by Charles P. Hoover to Louis J. Guthke, under date of May 7, 1919, which letter was in the following words and figures, to wit:

WATER SOFTENING AND PURIFICATION WORKS
CHARLES P. HOOVER
Chemist in Charge

COLUMBUS, OHIO,
May 7, 1919.

Mr. LOUIS J. GUTHKE, Secretary,
City Board of Purchase,
City of Columbus, Ohio.

DEAR SIR:

The following are the results of analyses of two samples of roof paint from the Fire Department, marked Sample No. 1 and No. 2.

	Sample No. 1	Sample No. 2
Soluble in Carbon Bisulphide	82.54%	59.23%
Insoluble in Carbon Bisulphide	17.46%	40.77%
Flash Test (Open Cup)	270° F	178° F
Fire Test (Open Cup)	340° F	200° F

Sample No. 1:

Material is practically insoluble in gasoline. Insoluble portion is sand and free carbon. Material has tarry odor. When heated to about 150° F, it boils and froths badly. Becomes very soft.

Sample No. 2:

Insoluble material appears to be nearly all asbestos with a small amount of sand. The odor resembles that of linseed oil and turpentine, similar to paint, upon heating. No softening appears to take place, probably due to large amount of asbestos present. Very soluble in gasoline.

Yours very truly,

WATER PURIFICATION WORKS,
By CHARLES P. HOOVER,
Chemist in Charge.

PAR. 3. That the circulation and publication of the advertisement aforesaid in interstate and foreign commerce by said respondent has the capacity and tendency to mislead and deceive the purchaser, and/or does mislead and deceive the purchaser of respondent's product into the belief that said advertisement included a true and exact copy of a letter from Charles P. Hoover containing a chemical analysis of said respondent's product and the product of a competitor, when in truth and in fact said letter included in said advertisement circulated and published by respondent as aforesaid, is not a true and exact copy of a letter from Charles P. Hoover containing the chemical analysis of said respondent's product and the product of a competitor, and that respondent's said false and misleading statetments as contained in said advertisement tend to injure respondent's competitor, Atlantic Refining Company, and render said competitor less able to compete with said respondent in the sale of its products in interstate and foreign commerce.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, American Turpentine Company, trading under the name and style of North American Fibre Products Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having entered its appearance and filed its answer herein, and having made, executed and filed an agreed statement of the facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony, and proceed forthwith, with such agreed statement of facts, to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of arguments in support of same; and the Federal Trade Commission having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, American Turpentine Company, is a corporation, organized, existing and doing business under any by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of purchasing in wholesale quantities, paints, varnishes, enamels, roofing material, roofing paint and similar products, and in the conduct of its business as a wholesaler or jobber has adopted and utilized the trade name, North American Fibre Products Company, in the sale of its said products in interstate and foreign commerce in and throughout the United States and portions of Canada, causing its products, when so sold, to be transported from the State of Ohio to purchasers located in other States of the United States and the Provinces of Canada; and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said products sold by said respondent, between and among the various States of the United States, and the United States and the Provinces of Canada. In the course of its business, respondent was at all times hereinafter mentioned, and still is, in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate and foreign commerce.

PAR. 2. That said respondent, trading as aforesaid, in the course and conduct of its business, for more than one year last past has printed or caused to be printed, circulated and published in interstate and foreign commerce, an advertisement of and concerning its products sold under the trade name or brand "HORNEBLENDE," and the products of its competitor, known to the trade, or sold under the trade name or brand, "ARCO," which said advertisement was in the following words and figures, to wit:

54 Findings.

Again HORNEBLENDE Wins in Competitive Test to Secure the Business from the State of Ohio!

HORNEBLENDE WON

MAY 7, 1919.

Mr. LOUIS J. GUTHKE, Secretary,
City Board of Purchase,
City of Columbus, Ohio.

DEAR SIR:

The following are the results of analyses of two samples of roof paint from the Fire Department, marked Sample No. 1 and No. 2.

	Atlantic Refining Co. "Arco" Sample No. 1	Hornblende Sample No. 2
Soluble in Carbon Bisulphide	82.54%	59.23%
Insoluble in Carbon Bisulphide	17.46%	40.77%
Flash Test (Open Cup)	178° F.	340° F.
Fire Test (Open Cup)	200° F.	340° F.

Sample No. 1:

Material is practically insoluble in gasoline. Insoluble portion is sand and free carbon. Material has a tarry odor. When heated to about 150° F. it boils and froths badly. Becomes soft.

Sample No. 2:

Insoluble material appears to be nearly all asbestos fibre with a solution of kauri gum. The odor resembles that of linseed oil and turpentine, similar to paint, upon heating no softening appears to take place, probably due to a large amount asbestos present. Very soluble in gasoline.

Yours very truly,

WATER PURIFICATION WORKS.
BY CHARLES P. HOOVER,
Chemist in Charge.

This is an exact copy of letter received from Chas. P. Hoover, Chemist in Charge of the State of Ohio.

That the advertisement above set forth was printed, published and circulated as aforesaid, and represented by said respondent to include "an exact copy of a letter received from Chas. P. Hoover, Chemist in Charge of the State of Ohio," when, in truth and in fact, said letter set forth under the above caption and included in said advertisement is not an exact or true copy of the letter as written by Charles P. Hoover to Louis J. Guthke, under date of May 17, 1917, which letter was in the following words and figures, to wit:

WATER SOFTENING AND PURIFICATION WORKS

CHARLES P. HOOVER,
Chemist in Charge.

COLUMBUS, OHIO,
May 7, 1919.

Mr. LOUIS J. GUTHKE, Secretary,
City Board of Purchase,
City of Columbus, Ohio.

DEAR SIR:

The following are the results of analyses of two samples of roof paint from the Fire Department, Marked Sample No. 1 and No. 2:

	Sample No. 1	Sample No. 2
Soluble in Carbon Bisulphide	82.54%	59.23%
Insoluble in Carbon Bisulphide	17.46%	40.77%
Flash Test (Open Cup)	270° F.	178° F.
Fire Test (Open Cup)	340° F.	200° F.

Sample No. 1:

Material is practically insoluble in gasoline. Insoluble portion is sand and free carbon. Material has tarry odor. When heated to about 150° F. it boils and froths badly. Becomes very soft.

Sample No. 2:

Insoluble material appears to be nearly all asbestos, with a small amount of sand. The odor resembles that of linseed oil and turpentine, similar to paint, upon heating. No softening appears to take place, probably due to large amount of asbestos present. Very soluble in gasoline.

Yours very truly,

WATER PURIFICATION WORKS,
By CHARLES P. HOOVER,
Chemist in Charge.

PAR. 3. That the circulation and publication of the advertisement aforesaid in interstate and foreign commerce by said respondent has the capacity and tendency to mislead and deceive the purchaser, and/or does mislead and deceive the purchaser of respondent's products into the belief that said advertisement included a true and exact copy of a letter from Charles P. Hoover, containing a chemical analysis of said respondent's product and the product of a competitor, when, in truth and in fact, said letter included in said advertisement circulated and published by respondent, as aforesaid, is not a true and exact copy of a letter from Charles P. Hoover containing a chemical analysis of said respondent's product and the product of a competitor, and that respondent's said false and misleading statement, as contained in said advertisement, tended to injure respondent's competitor, Atlantic Refining Company, and render said competitor less able to compete with said respondent in the sale of its product in interstate and foreign commerce.

PAR. 4. There are many wholesalers and jobbers of paints, varnishes and roofing material who, in their advertisements actually and truthfully set forth an analysis of the products which they sell.

CONCLUSION.

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purpose",

It is now ordered, That the respondent, American Turpentine Company, trading under the name and style of North American Fibre Products Company, and its officers, directors, agents, representatives, servants and employees, do cease and desist:

From circulating or publishing, or causing to be circulated or published, in the form of circulars or otherwise, advertisements offering products for sale, which advertisements do not truthfully describe such products;

From circulating or publishing in such advertisements or otherwise, a purported analysis of paints or other products, which is not, in fact, an accurate and truthful analysis of such products.

Respondent is further ordered, To file a report in writing with the Commission, sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

WASATCH WOOLEN MILLS, A CORPORATION.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 970—November 15, 1923.

SYLLABUS.

Where a corporation engaged in the sale of knit underwear, sweaters, skirts, hosiery, and other similar products direct to consumers, and neither owning, controlling, nor operating any mill manufacturing the knit goods sold by it, about one-half of which were made for it under an agreement with another concern and the balance bought from other companies, featured its corporate name "Wasatch Woolen Mills" on its letterheads and elsewhere, with the effect of misleading the trade and public into believing it to be the manufacturer of the goods sold by it:

Held, That such misrepresentation, under the circumstances set forth, constituted an unfair method of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. George Jay Gibson of Salt Lake City, Utah, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of An Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Wasatch Woolen Mills, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is now and has been since May, 1916, a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its principal place of business at Salt Lake City, in said State, and since its incorporation has been and now is engaged in the business of selling direct to customers located in Utah, Nebraska, Montana, and various other States of the United States, knit hosiery, sweaters, underwear and knit or woven coats, skirts, blankets and other similar merchandise, and in shipping and causing to be shipped said merchandise, when sold, from the State of Utah to its said customers at various points in other States of the United States. In the course and conduct of its said business, re-

spondent is and has been during all the times mentioned in this complaint, in competition with others similarly engaged.

PAR. 2. That respondent, in the course and conduct of its said business, uses its corporate name "Wasatch Woolen Mills," and has prominently displayed and does now prominently display its said name in its newspaper advertisements, letterheads, order blanks, package labels, and other stationery and literature, and also has and now does display upon its order blanks presented by its agents to prospective customers, the words "woolen goods made to order." The respondent has and does now solicit its business by its agents who travel throughout various States of the United States other than Utah, and solicit and obtain, direct from the user or consumer of the articles sold by respondent, orders for said articles. Said agents represent orally to their prospective customers that respondent is the manufacturer of the articles offered for sale. Respondent has also widely circulated and does now widely circulate, circulars among its prospective customers, containing over the signature of respondent, the representation that the articles sold by respondent are made expressly for the customer by the repondent and that the customer thereby obtains, at wholesale prices, a better quality of goods than he could obtain elsewhere, and other representations of like nature.

PAR. 3. Respondent has, at no time during its existence, owned, controlled, or operated, and does not now own, control or operate any woolen mill or other factory, and did not and does not now manufacture any of the articles sold or offered for sale by it, and has filled and now fills the orders received by it from its customers, from merchandise purchased by it from the stock of manufacturers and others.

PAR. 4. The use by respondent of the corporate name "Wasatch Woolen Mills" in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the public into the mistaken belief that the respondent owns or operates mills or factories in which are manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying directly from the manufacturer and are thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled,

"An Act to create a Federal Trade Commission to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provision of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Wasatch Woolen Mills, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing and counsel for the Federal Trade Commission and for the respondent having submitted briefs, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Wasatch Woolen Mills, the respondent, is now, and has been since May 1916, a corporation duly organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Salt Lake City in said State, and is engaged in the business of selling direct to customers located in Utah, Idaho, Montana, and various other States of the inter-mountain section of the United States, knit underwear, sweaters, skirts, hosiery, blankets, overcoats, leather vests, and other similar merchandise, and in shipping, and causing to be shipped said merchandise when sold, from the State of Utah to its customers in other States of the United States, in interstate commerce. In the course and conduct of its said business respondent is in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. The respondent was organized in the year 1916 and from 1916 to April 20, 1918, had machinery and manufactured by the process of knitting a proportion of the goods which they sold, but on or about April 20, 1918, the respondent became involved in financial difficulties and its machinery was sold and the management of the respondent thereupon entered into an agreement with the Model Knitting Works of Salt Lake City, Utah, a concern which had machinery and which manufactured by the process of knitting from

woolen yarn, underwear, sweaters, skirts and hosiery, and thereafter the respondent on its letterhead used the words:

WASATCH WOOLEN MILLS

Consolidated with

MODEL KNITTING WORKS

Manufacturers of

UTAHWEARE

Woolen Goods.

and the Model Knitting Works made up the garments so ordered and delivered them to the respondent who, in turn, caused them to be delivered to the customers.

PAR. 3. The business of the respondent has varied during different years from $60,000 to $125,000. The respondent solicits its business by means of solicitors or agents who travel throughout the various States in the inter-mountain section and solicit and obtain orders direct from the user or consumer of the articles sold. Knitted goods of various kinds constitute about 75% of the sales of respondent, and of these knitted goods, considered over a period of years, an average of 50% is manufactured for respondent by Model Knitting Works, the balance being bought from companies in the east and elsewhere. For such garments as are made by Model Knitting Works for the respondent, the orders, measurements and specifications are sent direct by the respondent to the Model Knitting Works which make up these orders day by day as they are received, and upon the completion of said orders, the goods are forwarded to the Wasatch Woolen Mills by the Model Knitting Works, and are by the respondent forwarded to the individual customer.

PAR. 4. The respondent in addition to its business in underwear, sweaters, wool skirts, and other knit goods carried on as set forth in paragraph 3 above, also carries a side line of blankets, overcoats, and leather vests, the blankets and overcoats which it sells being for the most part bought from woolen mills located at Provo, in the State of Utah, and the leather vests from Minneapolis.

PAR. 5. The word "Utahweare" is a trade name which has been in use for years by the Model Knitting Works and with the consent and approval of the Model Knitting Works the respondent features the said word on its letterheads, shipping tags, and other literature. Respondent uses the trade name "Utahweare" on practically all the

knitted sweaters and underwear which it sells, whether made by the Model Knitting Works or by other manufacturers, and it furnishes labels bearing this word to the eastern manufacturers from which it purchases sweaters and other knitted goods. On the shipping tag used by the respondent appear the words "Manufacturer of Utah-weare Woolen Goods."

There is no evidence that the agents or solicitors of the respondent ever in any way orally misrepresented to customers the origin of the goods offered for sale, but said agents or solicitors are instructed by respondent to make no statement to a customer as to whether the articles sold by respondents are manufactured by it to individual measure, bought from eastern concerns, or made in the State of Utah.

PAR. 6. The respondent at the time of the taking of the testimony in this case, to wit, June 15, 1923, did not own any machinery, and did not at that time, nor has it since April 20, 1918, manufactured in any plant owned by it, any of the products which it sells.

PAR. 7. The use by respondent of the name "Wasatch Woolen Mills, Inc.," as set forth in the complaint herein creates the impression in the minds of the trade and public that the company is engaged in the process of manufacturing certain articles which it sells by the method of knitting, and leads the public to believe that said respondent does actually own or operate a mill or factory in which articles sold by it are manufactured. The fact is that respondent does not manufacture any of the articles which it sells and does not own, control or operate any mill in which knitted goods are manufactured.

CONCLUSION.

That the acts, practices and activities of respondent as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress ap-

proved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore it is ordered, That the respondent, Wasatch Woolen Mills, Inc., cease and desist from doing business under the corporate name and style of Wasatch Woolen Mills, or any other corporate name which includes the word "mills" unless and until such respondent actually owns or operates a mill or mills in which it manufactures the woolen articles which it sells.

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

FEDERAL TRADE COMMISSION

v.

JENKINS KNITTING MILLS COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 972—November 15, 1923.

SYLLABUS.

Where a corporation engaged in the sale of knit underwear, sweaters, hosiery, and other similar merchandise, which it purchased from the manufacturers thereof and sold direct to consumers, and neither owning, operating nor controlling any knitting mill manufacturing the knit goods sold by it, used and featured its corporate name, Jenkins Knitting Mills Co., on its labels, shipping tickets, and order blanks, and in its advertising and other trade literature, etc., with the effect of misleading the trade and public into believing it to be the manufacturer of the goods sold by it:

Held, That such misrepresentation, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of An Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Jenkins Knitting Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is now and has been for over one year last past a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its principal place of business at Provo, in said State, and since its incorporation has been and now is engaged in the business of selling direct to customers located in California, Oregon and Washington and various other States of the United States, knit and woven hosiery, sweaters, underwear, coats, skirts, blankets and similar merchandise, and in shipping or causing to be shipped said merchandise, when sold, from the State of Utah to its said customers at various points in other States of the United States. In the course and conduct of its said business, respondent is and has been during all of the times mentioned in this complaint, in competition with other similarly engaged.

PAR. 2. Respondent, in the course and conduct of its said business, uses its corporate name "Jenkins Knitting Company," and has prominently displayed and does now prominently display its said name in its newspaper advertisements, letterheads, order blanks, package labels, and other stationery and literature, and has solicited and now solicits its business through its agents who travel throughout various States of the United States other than Utah, and solicits and obtains orders direct from the users and consumers of the articles sold by respondent. Said agents circulate respondent's literature above mentioned and also represent orally to their prospective customers that the respondent is the manufacturer of the articles offered for sale.

PAR. 3. Respondent has at no time during its existence owned, controlled or operated and does not now own, control, or operate any knitting or other factory and did not at any time and does not now manufacture any of the articles offered for sale by it, and has filled and now fills the orders received by it from its customers, from merchandise purchased by it from the stock of manufacturers and others.

PAR. 4. The use by respondent of the corporate name "Jenkins Knitting Company" in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the purchasing public into the mistaken belief that the respondent owns or operates a factory for the knitting of wool and other material in which is manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying directly from the manufacturer and are thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS AND ORDER.

Pursuant to the provision of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Jenkins Knitting Mills Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

And therefore this proceeding came on for final hearing and counsel for the Commission having submitted a brief and the defendant having notified the Commission of his intention not to file any brief and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Jenkins Knitting Mills Company, is a corporation organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Provo in said State, and since its incorporation in January, 1922, has been engaged in the business of selling direct to customers located in North and South Dakota, Montana, Idaho, Washington, Oregon, California, Nevada, Wyoming, Arizona and New Mexico, knit underwear, sweaters, hosiery, skirts and blankets, and similar merchandise, and in shipping or causing to be shipped said merchandise, from the State of Utah to its said customers at various points in other States of the United States. In the course and conduct of its said business, respondent is in competition with others similarly engaged.

PAR. 2. The respondent in the course and conduct of its business uses its corporate name "Jenkins Knitting Mills Company" and has prominently displayed and does now prominently display its said name in its advertisements, on its labels, on its shipping tickets and order blanks, and other literature, and solicits its business through traveling salesmen who travel throughout the various States hereinbefore mentioned, and solicit and obtain orders direct from the users and consumers of the articles sold by respondent. The said agents circulate the literature of the respondent above mentioned and solicit and take orders in the name and for the account of the respondent, Jenkins Knitting Mills Company. Respondent instructs its salesmen not to make any statement regarding where, or by whom the articles which it sells are made, unless specifically asked by the customer; if no question is asked, the articles are sold as being respondent's goods. Respondent does not know whether its salesmen represent to the customers that the articles are made by respondent.

PAR. 3. Of the knitted goods sold by respondent, about 50% of the underwear and 25% of the sweaters are made to order from measurements supplied by the customers, the remainder being bought in stock sizes at the beginning of the season from the manufacturers thereof, and orders received by respondent are filled from said stock. Only 10% of the overcoats sold by respondent are made to individual measure, the remainder being bought ready-made from the manufacturers thereof. Respondent purchases the knitted underwear, sweaters and hoisery which it sells from several knit goods manufacturers in the State of Utah, and buys its woolen goods, such as blankets, overcoats, mackinaws and skirts from woolen mills in the city of Provo, Utah. In cases where it is necessary, the measurements of the customer are taken, and the mills above mentioned manufacture the articles to conform to such measurements.

PAR. 4. The respondent does not now, nor has it at any time during its existence, owned, operated or controlled any knitting mill or factory, and does not now manufacture, and has never during its existence manufactured any of the articles sold or offered for sale by it.

PAR. 5. The use by respondent of the name "Jenkins Knitting Mills Company" as set forth in the complaint herein, creates the impression in the minds of the trade and public that the company is engaged in the process of manufacturing certain of the articles which it sells by the method of knitting, and leads the public to believe that said respondent does actually own or operate a mill or factory in which articles sold by it are manufactured.

CONCLUSION.

That the acts, practices and activities of respondent as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress ap-

proved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent Jenkins Knitting Mills Company, Inc., cease and desist from doing business under the corporate name and style of Jenkins Knitting Mills Company or any other corporate name which includes the words "knitting" or "mills" unless and until such respondent actually owns or operates a factory or mills in which it manufactures the knitted articles which it sells.

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

FEDERAL TRADE COMMISSION

v.

MRS. E. M. HENNING, JOSEPH M. HENNING, C. WESLEY HENNING, AND WILLIAM E. HENNING, INDIVIDUALS, TRADING UNDER THE NAME AND STYLE OF PHILLIPS GENUINE SAUSAGE COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 998—November 15, 1923.

SYLLABUS.

Where the name "Phillips" had for many years been applied to sausage made and sold by various members of a family of that name in a certain city; and thereafter the successors to a business founded and conducted by one of said family as the "Thomas C. Phillips Sausage Co.," and doing business as the Phillips Genuine Sausage Co., stated upon the labels of their product that the same was "made and prepared by Thos. C. Phillips," notwithstanding the fact that said Thos. C. Phillips neither made said sausage nor had conveyed the right to use such legend:

Held, That the sale of goods misrepresented as above set forth constituted an unfair method of competition.

Mr. Thomas H. Baker, Jr. for the Commission.

Mr. H. S. Barger and *Mr. C. R. Ahalt* of Washington, D. C., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce and in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Company, are now, and for more than two years last past, have been, among other things, engaged in the manufacture and sale of pork sausage in wholesale quantities in the city of Washington, District of Columbia, with their principal office and place of business in said city and District. In the course of their said business, respondents

are in connection with other individuals, partnerships and corporations similarly engaged.

PAR. 2. Amongst the aforesaid competitors of respondents is the Joseph Phillips Company, a partnership which has its principal office and place of business in the city of Washington, District of Columbia. The said Joseph Phillips Company, and its predecessors have for many years been engaged in the manufacture of pork sausage under a secret formula, and in the sale thereof, and have since the inception of their businesses labeled, branded and advertised their said products under the names of "Phillips Sausage" or "Phillips Original All Pork Sausage." The said Joseph Phillips Company by reason of their extensive advertising and long use of the name "Phillips Sausage" and "Phillips Original All Pork Sausage", have built up a large and valuable good-will for their said products so manufactured, advertised and sold, and the purchasing public of the District of Columbia have, through continued association, come to understand that the name "Phillips" when applied to sausage designates that sausage manufactured and sold by the said Joseph Phillips Company.

PAR. 3. The said Joseph Phillips Company packs said pork sausage in one-pound packages which are wrapped in paper and upon each said wrapper of which appears the legend:

Ask for
JOS. PHILLIPS
Manufacturer of
THE ORIGINAL
ALL PORK SAUSAGE
U. S. Inspected and Passed by Department
of Agriculture. Establishment No. 60.
1 lb. NET. WASHINGTON, D. C.

This said legend is printed in red and blue letters upon white paper.

PAR. 4. Respondents for more than two years last past have manufactured and sold, among other things, a pork sausage put up in one-pound packages, which said sausage it advertises by means of labels, circulars and various other printed matter in the following manner:

PHILLIPS'
"GENUINE"
ALL PORK
HOME MADE SAUSAGE
MADE AND PREPARED BY THOMAS C. PHILLIPS.

The said labels, circulars, advertisements and other printed matter so describing the product manufactured and sold by respondents have the tendency and capacity to mislead and deceive the consuming public into the belief that by purchasing the product of respondents it is obtaining the product of the said Joseph Phillips Company.

PAR. 5. The statement appearing on said labels, circulars, advertisements and other printed matter that the said product of respondents is, "made and prepared by Thomas C. Phillips" is false and misleading, for said product is in truth and in fact not made or prepared by any Thomas C. Phillips, nor is there any Thomas C. Phillips connected with the manufacture or sale of respondents' product in any capacity, nor has there been for many years.

PAR. 6. The practices, acts and conduct of respondents set forth above are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents herein, charging them with the use of unfair methods of competition in violation of Section 5 of the provisions of said act. Respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning and William E. Henning, individuals trading under the name and style of Phillips Genuine Sausage Co., having entered their appearance and filed their answer, pursuant to the order and designation of the Federal Trade Commission hearings were had before an examiner of the Commission, and testimony and evidence having been introduced in support of the charges of said complaint and in opposition thereto, thereupon this proceeding came on for final hearing before the Commission upon the testimony and evidence introduced, the examiner's report and exceptions thereto, and upon briefs for both sides, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning and William E. Henning, individuals trading under the name and style of Phillips Genuine Sausage Co., are a partnership engaged in the manufacture and sale of pork sausage in the city of Washington, District of Columbia, and have been so engaged for more than two years last past, with their principal office and place of business in the said city and District, where they are in active competition with other persons, firms and corporations similarly engaged.

PAR. 2. The name "Phillips" was first applied to sausage in the city of Washington, District of Columbia, by one Thomas W. Phillips in or about the year 1859, when he commenced the manufacture and sale of sausage in the city and District aforesaid under his own name. During the year of 1885 one Joseph Phillips, son of the said Thomas W. Phillips, acquired an interest in the said business of Thomas W. Phillips and conducted the business until the death of the said Thomas W. Phillips in 1892, under the name of Thomas W. Phillips & Son. Upon the death of the said Thomas W. Phillips in 1892 the said Joseph Phillips came into full possession of the said business and continued to manufacture and sell sausage in the city of Washington, District of Columbia, under his own name, and sometime between the years of 1892 and 1900 the said Joseph Phillips advertised and sold his sausage as "Joseph Phillips' Original All Pork Sausage." The said sausage so manufactured and sold by the said Joseph Phillips was manufactured under a secret formula originated by the said Thomas W. Phillips.

PAR. 3. On or about the first day of June, 1911, the said Joseph Phillips leased unto Fred A. Spicer and Charles H. Leavell the physical properties of his said business and the right to manufacture under the name of Joseph Phillips and to manufacture "Joseph Phillips' Original All Pork Sausage." This contract was renewed October 16, 1916, and again on October 9, 1920, the said Joseph Phillips retaining for himself and his heirs a reversionary interest in said business and agreeing in said contract of leasing not to engage in business under the name of Phillips or to manufacture the said "Joseph Phillips' Original All Pork Sausage" in the city of Washington. The said Joseph Phillips further agreed to furnish the spices entering into the manufacture of said sausage, which said spices were to be mixed under the secret formula by which the said sausage had heretofore been manufactured. In the last above-named lease the said Joseph Phillips conveyed to Spicer and Leavell the

right to use all trade names that might have been used by him at any time in advertising his said product. The said Spicer and Leavell now manufacture and sell in the city of Washington, District of Columbia, sausage under the name of "Joseph Phillips Company" and put up said sausage in one-pound packages, wrapped in parchment paper bearing the label:

ASK FOR
JOS. PHILLIPS
MANUFACTURER OF
THE ORIGINAL
ALL PORK SAUSAGE
U. S. INSPECTED AND PASSED
BY DEPARTMENT OF AGRICULTURE
ESTABLISHMENT NO. 60.
One pound net. Washington, D. C.

—the words "The Original" and a border being printed in red ink and the remainder of the printing in blue ink, all upon white paper.

PAR. 4. Thomas C. Phillips, a son of the said Joseph Phillips, worked in the sausage factory of his father up to and until about the year of 1891, when he left his father and started manufacturing and selling sausage in the District of Columbia upon his own account, under the name "Thomas C. Phillips Sausage Company." About the year 1897 or 1898 the said Thomas C. Phillips took in as a partner one Joseph Henning, and together they conducted the business as Phillips & Henning up to and until about the year 1904, when the partnership was dissolved. During the life of the said partnership the sausage manufactured by it was sold as "Thomas C. Phillips' Sausage." Upon the dissolution of said partnership by written agreement signed by both parties, the said Joseph Henning received all manufacturing rights of "Phillips' Sausage Meat," better known as "Phillips' Genuine Home Made Sausage," and the said Thomas C. Phillips assigned and transferred all his rights, title and interest to manufacture such sausage meat to the said Henning. In the year of 1904 Joseph Henning registered as a trade-mark in the U. S. Patent Office the label "Phillips' Genuine Home Made Sausage." Said Joseph Henning thereafter continued the manufacture and sale of sausage under the said label up to and until about 1914, when he assigned his interest in the above-mentioned business to the respondent Mrs. E. M. Henning, his wife, who conducted the said business under her own name up to and until about 1917 or 1918, when the said Mrs. E. M. Henning changed the name of said business to "Phillips' Genuine Sausage Company."

After the death of the said Joseph Henning the respondent Mrs. E. M. Henning took into partnership the present respondents herein and they still conduct the said business and manufacture and sell sausage in the District of Columbia under the name and style of "Phillips' Genuine Sausage Company."

PAR. 5. The sausage so manufactured and sold by respondents is put up in one-pound packages, each with a wrapper reading:

PHILLIPS GENUINE
T ALL-PORK C
HOME MADE SAUSAGE
P CO.
MADE AND PREPARED BY
THOS. C. PHILLIPS
NET WEIGHT ONE POUND.

Upon this label there is in red ink the figure of a pig. The legend appearing upon the label set out next above, to wit, "Made and prepared by Thos. C. Phillips," is false and misleading, as the said sausage so manufactured, advertised and sold by the respondents herein is not made and prepared by Thomas C. Phillips but is in truth and in fact made and prepared by the respondents herein named, and the said Thomas C. Phillips did not, in the dissolution of partnership hereinbefore mentioned, or in any subsequent contract or agreement, confer upon the said respondents any right to use the legend "Made and prepared by Thos. C. Phillips."

CONCLUSION.

The practices of said respondents as set forth in the foregoing findings as to the facts are unfair and constitute a violation of the Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having duly made its findings as to the facts, with its conclusion that respondents have violated the provisions of

an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning and William E. Henning, individuals trading under the name and style of Phillips Genuine Sausage Co., their agents, servants and employees, do cease and desist from directly or indirectly—

Representing, advertising, labeling or branding in any manner whatsoever their said sausage as "Made and prepared by Thomas C. Phillips," unless and until such products are actually made and prepared by Thomas C. Phillips.

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

FEDERAL TRADE COMMISSION

v.

F. B. DUNN ET AL.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 742—November 26, 1923.

SYLLABUS.

Where certain individuals engaged in the sale of shares in an oil company organized by some of them; in promoting the sale of said shares represented in pamphlets, circulars, letters, and other advertising matter that wells of the company were producing 1,400 barrels of oil daily, that the income therefrom was piling up a dividend account, and that the company was paying dividends quarterly at the rate of 24 per cent annually out of actual oil production; the fact being that production from said wells amounted to less than 50 barrels per day, and the company had no earnings sufficient for dividends, or income from any source other than from the sale of stock, out of which to pay dividends, and was actually insolvent; with the result that the public, or a substantial portion thereof, was misled and deceived into the purchase of a large portion of said oil company's shares:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. James M. Brinson for the Commission.

Mr. Horace P. Babson of Dallas, Texas, for respondents R. T. Harris, L. G. Wright, S. H. Miles and J. H. Darby.

Mr. O. F. Winkler of Dallas, Texas, for respondent T. E. Lester.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that F. B. Dunn, R. T. Harris, L. G. Wright, T. E. Lester, S. H. Miles, George F. Barton, F. L. McCoy, and J. H. Darby, hereinafter referred to as the respondents, have been and are using unfair methods of competition in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondents, F. B. Dunn and R. T. Harris, on September 15, 1919, organized the Congressional Oil Company under a declaration of trust, which was recorded in deed records of Wichita County, Texas, which association had an authorized capital stock of $2,000,000, divided into 20,000,000 shares of the par value of ten cents each; that the respondents, L. G. Wright and T. E. Lester and S. H. Miles, thereafter became trustees of such association; that immediately after the organization of the Congressional Oil Company it entered into a contract with the respondent, F. B. Dunn, who was operating under the name and style of the Congressional Sales Company, whereby said F. B. Dunn, operating as the Congressional Sales Company, was made the exclusive agent for the sale of 10,000,000 shares of the treasury stock of the Congressional Oil Company upon the basis of a commission of 50 per cent of the proceeds of the sale of such stock, and the balance of the stock of the company was issued to the respondent, R. T. Harris, in consideration of the transfer to the association of certain oil and gas leases, and the terms of this contract were subsequently changed so that said Harris received for said leases, so transferred to the company, 3,500,000 shares of the company's stock and its note for $275,000, which note was subsequently paid out of the proceeds of the sale of treasury stock to the public; that also on September 15, 1919, the respondents, R. T. Harris, F. L. McCoy and J. H. Darby organized the Wichita Trust Company, under a declaration of trust recorded in the deed records of Wichita County, Texas, with authorized capital stock of $10,000, which thereafter purported to act as the fiscal agent for the Congressional Oil Company, but had no assets and engaged in no other business; that the respondent, George F. Barton, individually and operating under the name and style of Oil Investors Syndicate, directed the sale of the stock of the Congressional Oil Company for the Congressional Sales Company and for the respondent, R. T. Harris, and his assignees, and prepared all the advertising matter used by brokers and sub-agents in the sale of the stock in various States of the United States.

PAR. 2. That from September 19, 1919, to May, 1920, the respondents, each acting in their respective capacities as set out in paragraph 1 hereof, caused the stock of the Congressional Oil Company to be sold to the general public in various States of the United States, upon mail orders or through agents upon commission, in direct, active competition with other corporations and joint stock associations similarly engaged, and respondents caused the certificates of such stock when sold, to be transported to purchasers thereof

from the State of Texas through and into other States of the United States.

PAR. 3. That in the sale of the stock of the Congressional Oil Company, as described in paragraph 2 hereof, and as an inducement to purchasers and prospective purchasers to purchase such stock, respondents made use of pamphlets, circulars, circular letters, and other advertising matter which contained numerous false and misleading statements of and concerning the Congressional Oil Company and its properties and holdings, and caused such advertising matter to be transported from the State of Texas through and into other States of the United States to prospective purchasers and agents of respondents to be used by them in the sale of such stock; that among the false and misleading statements contained in such advertising matter, as aforesaid, were statements to the effect that the company's wells, Nos. 1 and 2, were each producing 1,400 barrels of oil per day, which was many times greater than their actual production; that three other wells were being drilled at depths ranging from 200 to 1,200 feet, and a sixth well would soon be started, whereas no such wells were being drilled or in contemplation; the acreage of oil leases controlled by the company was also misrepresented and overstated, and various other statements of equally false and misleading character were made of and concerning the property and affairs of the company; that such advertising matter was calculated to and did mislead and deceive those who were induced to purchase said stock.

PAR. 4. That in the advertising matter used by the respondents in the sale of stock, as hereinbefore set out, repeated references were made to the Wichita Trust Company in such a manner as to create the false impression that it was a going concern actively engaged in a banking and trust company business, and the fact that it was a dummy organization without financial responsibility and controlled by the promoters of the Congressional Oil Company was concealed by respondents; and statements were made in such advertising matter to the effect that the project and operating methods of the Congressional Oil Company had been "Investigated—approved—recommended," by said Wichita Trust Company; purchasers of stock were further deceived and defrauded by the failure of the respondents to disclose in such advertising matter the relations existing between the Congressional Oil Company and the Congressional Sales Company, and that the sales company was a mere device for the furtherance of the fraudulent schemes of promoters of the Congressional Oil Company.

PAR. 5. That as a means of enhancing the sale of stock of the Congressional Oil Company, respondents on January 1, 1920, had a dividend of six per cent declared upon the stock issued and outstanding, which dividend was paid in the main out of the capital of the association, for its earnings up to that time were not sufficient to warrant the payment of such dividend or any dividend, but immediately upon the payment of such dividend the advertising matter used by respondents in the further sale of the stock made mention of the fact that the company in its first 3 months of operation had paid a dividend of 6 per cent, or at the rate of two per cent per month, or twenty-four per cent per year, which statement materially aided respondents in the further sale of the stock.

PAR. 6. That in the organization of the Congressional Oil Company, none of the respondents contributed any cash, or bought any stock in the company for cash, but said company was simply used as a device to enable the respondent, R. T. Harris, to unload on the company certain oil leases owned by him, at greatly excessive and fictitious prices and at prices greatly in excess of their fair value, if they had any value, and to receive in payment therefor the proceeds of the sale of the stock of the company, after certain of the other respondents had deducted 50 per cent of the proceeds of the sale of such stock as their commission on such sale; that the entire proceeds of the sale of the first 5,500,000 shares sold at par went to the respondent, Harris, in partial payment for the oil leases transferred by him to the company, which leases were of doubtful value, or of no value; that in addition to this payment in cash, said Harris also had issued to him 3,500,000 shares of the stock of the company, which he proceeded to sell to the public at par, through the respondents Dunn and Barton.

PAR. 7. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, F. B. Dunn, R. T. Harris, L. G. Wright, T. E. Lester, S. H. Miles, Geo. F. Barton, F. L. McCoy and J. H. Darby, charging them with unfair methods of competition in commerce in violation of the provisions of said act. The respond-

ents, with the exception of T. E. Lester and S. H. Miles filed answers, after which, hearing was had and evidence introduced in support of the complaint, before an examiner of the Commission theretofore duly appointed, whereupon the case was closed and the testimony so taken was reduced to writing and filed in the office of the Federal Trade Commission.

And thereupon this proceeding came on for final hearing and counsel for the Commission having submitted brief, the respondents having failed to file briefs within the time prescribed or at all or to apply, for an extension of time for briefs, or for oral argument, and the Commission having duly considered the record and now being fully advised in the premises, and being of the opinion that the methods of competition in question are prohibited by said act, makes this its findings as to the facts and conclusions:

PARAGRAPH 1. The respondents, F. B. Dunn and R. T. Harris, on September 15, 1919, organized under a declaration of trust, the Congressional Oil Company, with an authorized capital stock of $2,000,000 divided into 20,000,000 shares of the par value of 10 cents each. Immediately thereafter respondents, R. T. Harris, F. B. Dunn and George F. Barton, entered into an arrangement for the sale of 10,000,000 shares of the treasury stock of the Congressional Oil Company, and the said F. B. Dunn, operating under the name and style of the Congressional Sales Company and respondent George F. Barton operating under the name and style of the Oil Investor's Syndicate, and at all times with knowledge, consent and cooperation of respondent R. T. Harris, caused the stock of the said Congressional Oil Company to be sold in the various States of the United States, upon mail orders or through agents in direct and active competition with other persons, partnerships, and corporations, engaged in the sale and distribution of stocks and securities, and caused the certificates of such stock to be transported to purchasers thereof, from the State of Texas, through and into various other States of the United States.

PAR. 2. Respondents sold and offered for sale the stock of the Congressional Oil Company, by means of pamphlets, circulars, letters, and other advertising matter which were distributed among the agents of respondents and among purchasers and prospective purchasers of stock in the various States and Territories of the United States by mail and otherwise. These pamphlets, circulars and other advertising matter contained the following false and misleading representations: First, that the Congressional Oil Company had two wells that were daily producing 1,400 barrels of oil; Second, that an income from these two wells was piling up a divi-

dend account and that the Congressional Oil Company was paying dividends quarterly at the rate of 24% annually out of an actual oil production, whereas, in truth and fact the production of the Congressional Oil Company during the period when such representations were made to the public as an inducement to purchase said stock, amounted to less than 50 barrels of oil per day, and the Congressional Oil Company had no earnings sufficient for dividends as advertised and otherwise, nor money from any source with which to pay them or any of them except that received from the sale of its stock. This company was actually insolvent during the entire period when the public was induced by respondents to buy its stock by means of the aforesaid false and misleading misrepresentations.

PAR. 3. The false representations mentioned and each of them in paragraph 2 that the Congressional Oil Company had two wells producing 1,400 barrels of oil daily and that the company was paying dividends quarterly at the rate of 24% annually, out of an actual oil production, had the capacity to mislead and deceive and did mislead and deceive the public or a substantial portion thereof into the purchase of approximately 19,000,000 shares of its stock.

PAR. 4. Respondents, L. G. Wright, T. E. Lester, S. H. Miles, F. L. McCoy and J. H. Darby had no connection with the advertisement or sale of the stock in the Congressional Oil Company or any of it and neither participated in nor were directly or indirectly connected with, or responsible for, any of the false and misleading representations heretofore mentioned.

CONCLUSION.

That the practices of the respondents, F. B. Dunn, R. T. Harris and George F. Barton, under the conditions and circumstances described in the foregoing findings of facts are unfair methods of competition in commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, F. B. Dunn, R. T. Harris, L. G. Wright, Geo. F. Barton, F. L. McCoy and J. H. Darby; respondents T. E. Lester and S. H. Miles having failed to answer, although appearing by counsel, and brief of the attorney for the Commission, counsel for respondents

having failed to submit brief, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, F. B. Dunn, R. T. Harris and Geo. F. Barton and their agents do cease and desist from directly or indirectly—

Publishing, circulating, or distributing or causing to be published, circulated, or distributed, any magazine, newspaper, pamphlet, circular, letter, advertisement or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property or operation of any corporation, association or partnership is in proven oil territory, or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospect of any corporation, association or partnership, and

That the proceeding be dismissed as to respondents L. G. Wright, T. E. Lester, S. H. Miles, F. L. McCoy and J. H. Darby, and

It is further ordered, That said respondents, F. B. Dunn, R. T. Harris and Geo. F. Barton, shall within forty (40) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

GEORGE F. BARTON ET AL.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 856—November 26, 1923.

SYLLABUS.

Where an individual engaged in the sale of oil shares in a "syndicate" organized by him; in promoting the sale of said shares through the agency of a brokerage company, under an agreement entered into with the owner thereof whereby such owner was to receive a part of the profits from the sale of said shares, with the knowledge and consent of such owner represented in letters, pamphlets, and other advertising matter that one lease of the syndicate was a proven lease consisting of a 300 acre tract situated in a specified so-called oil field in Texas, and that the syndicate was a dividend-paying oil investment, paying dividends at the rate of 2% a month, or 24% annually; the fact being that said lease was not a proven lease and that the syndicate had never paid a dividend or earned a profit from which a dividend could legitimately be paid; with the effect of misleading and deceiving the purchasing public:

Held, That such practices on the part of said individuals, under the circumstances set forth, constituted an unfair method of competition.

Mr. James M. Brinson for the Commission.

Mr. H. P. Babson of Ft. Worth, Texas, for respondent George F. Barton.

Mr. Rockwood Brown in his own behalf.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that George F. Barton, Rockwood Brown, Charles N. Edwards, Claude A. Hargis and R. W. Watts, hereinafter referred to as respondents, have been and are using unfair methods of competition, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and it appearing that a proceeding by it in respect thereof would be of interest to the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, George F. Barton, Claude A. Hargis and R. W. Watts are residents of the State of Texas, having their offices and places of business in the city of Fort Worth, in said State; that the respondent Rockwood Brown is a resident of the

State of Montana, having his residence and place of business in the city of Billings, in said State; that the respondent Charles N. Edwards is a resident of the State of Missouri, having his office and place of business in the city of Kansas City, in said State.

That on or about February 26, 1919, the respondent George F. Barton, in the equal interest of himself and that of the respondent Rockwood Brown, promoted and caused to be organized a voluntary, unincorporated association, known and called by him Consolidated Royalty & Leasing Syndicate, under a so-called declaration of trust, in which the respondent Charles N. Edwards was named as trustee, which declaration of trust declared, among other things, that the business of said Consolidated Royalty & Leasing Syndicate was the buying, selling and holding of oil properties, leases, lands or royalties, and to make a profit for its shareholders from the increased values resulting from the drilling of wells by others, and provided for a capitalization of $500,000, divided into 500,000 shares of the par value of $1.00 each.

That the respondent Claude A. Hargis succeeded the respondent Charles N. Edwards as trustee, under said declaration of trust, and at or about the same time, became President of said Consolidated Royalty & Leasing Syndicate; that the respondent R. L. Watts was, at all times, the secretary of said Syndicate; and that said respondents, in the sale of stock in said Consolidated Royalty & Leasing Syndicate, and in inducing and procuring subscriptions for such stock, and in distributing the same to the purchasers thereof and to subscribers therefor, each acted for himself and in conjunction with each other.

PAR. 2. That the respondents, on behalf of said Consolidated Royalty & Leasing Syndicate, and each on behalf of himself, and in conjunction with each other, and under the direction of the respondent George F. Barton, in the conduct of the business of promoting and organizing said Consolidated Royalty & Leasing Syndicate, and in advertising the sale of shares of stock therein, have procured subscriptions for stock and purchases of stock from divers persons, copartnerships and corporations in various States of the United States; that numerous letters and circulars and much advertising matter have been transported through the mails, and by other means, by and on behalf of said respondents, into and through the various States of the United States and the District of Columbia, to purchasers and prospective purchasers of such stock; that much of such stock of said Consolidated Royalty & Leasing Syndicate has been sold by said respondents and their agents to divers persons, copartnerships and corporations in various States of the United

States and the District of Columbia, and that the respondents have caused the shares of stock in said Consolidated Royalty and Leasing Syndicate so sold, to be transported from the cities of Fort Worth and Wichita Falls, in the State of Texas, and from various other places, to the purchasers thereof in other States than the State from which they were sent, in competition with other persons, copartnerships and corporations engaged in the sale and distribution of stocks and securities.

PAR. 3. That immediately upon the organization of said company, as aforesaid, the respondents, each for himself and in conjunction with each other, and under the direction of respondents George F. Barton and Rockwood Brown, in the course of selling stock therein deceived and defrauded the public and particularly that part of the public who bought or contracted to buy stock in said Consolidated Royalty & Leasing Syndicate by causing or inducing such purchasers of stock and contractors for the purchase of stock to buy or contract to buy the same by means of false, unfair and misleading information, statements, reports and representations concerning the plan of organization, assets, resources, business, progress and prospects of said company and more particularly deceived and defrauded the public and that portion thereof who bought or contracted to buy stock in said company, as many did, relying on the truth of said information, statements, reports and representations, by representing, through advertisements and various other means, to the public and customers and prospective and possible customers; that Burkley Oil Company's well on Block 72, came in producing 2,000 barrels of oil per day; that Consolidated Royalty & Leasing Syndicate owned practically one-fourth of this production; that Consolidated Royalty & Leasing Syndicate was organized under the laws of Texas; that it was a royalty and leaseholding company formed on banking principles, offering an equal partnership basis of fair and square cooperation, assuring positive large income, with absolute safety; that it was on a dividend-paying basis; that it owned 300 acres in Iowa Park—Electra Fields, with a well thereon then about 800 feet deep, and that a contract was being made on a fifty-fifty basis, for the drilling of other wells; that there were twenty-one (21) producing wells in the immediate vicinity of said 300-acre tract, the most distant of which was not over one and one-fourth miles away; that it had a tract of forty (40) acres with six (6) producing wells fully equipped, delivering oil to a pipe line; that it owned Burkburnett and Ranger royalties and lease-holdings; that it was paying dividends of 24% annually; that then was the time to become a stockholder in this really big Texas Giant, a fully paid, non-assessable, dividend-paying oil investment; that it had a

300-acre proven lease in Iowa Park Fields; that but a short time remained before the books closed for the coming dividend; that said Consolidated Royalty & Leasing Syndicate was paying dividends at the rate of 2% per month; that the Burkley Oil Company, at its annual meeting, had voted to drill up its whole lease; that the Burkley Oil Company's well, from which the Syndicate derived its income, had only succeeded in running a small amount of oil through the pipe line, and that as soon as their check was received from this run, it would be used in the payment of dividends; that the plan and policy of said Consolidated Royalty & Leasing Syndicate offered to its stockholders an equitable, undivided interest in several hundred leases scattered over the one hundred and nineteen (119) counties of Texas; that the Burkley well came in with an initial flow of 2,000 barrels, and that this well immediately put the Consolidated Royalty & Leasing Syndicate in the dividend-earning class; that a contract had been let to drill a well on the big Iowa lease, without cost to the Syndicate; that the office of the Consolidated Royalty & Leasing Syndicate was literally swamped with orders and telegraphic reservations for its stock; that said Syndicate had something like 300 salesmen and nearly 200 brokers working out of its office; that its royalties pay monthly incomes from pipeline companies direct; that there was no personal liability to stockholders; that the purchasers of stock in the Consolidated Royalty & Leasing Syndicate became the owners of a pro rata interest in real, tangible assets; that proceeds of the sale of stock all went to buy royalties and leaseholding interests; that it was a chartered provision in the organization of said Syndicate that 50% of all profits derived from incomes from royalties, production of oil, or sale of royalties or leases, must be paid to the stockholders; that the funds derived from the sale of stock, dollar for dollar, were invested and reinvested in additional leases and royalties, except for minor office expenses, printing and advertising; that the stock of Consolidated Royalty & Leasing Syndicate offered conservative investors an assured income from its positive plan of organization and guaranteed dividends; that said Syndicate owned royalty interests in the following oil districts of Texas: Beaumont, Sour Lake, San Padre, Joaquin, Caddo, Corsicana, Knowles, three in the Ranger district, two in Burkburnett, one in Bangs and one in Brownwood; and that it had the following holdings, viz., two holdings in Burkburnett and one hold each in Archer, Baylor and Comanche counties; that it was not a stock-selling company of the usual promotion type; that the 300-acre tract of the Consolidated Royalty & Leasing Syndicate was surrounded by production; that its funds were invested in royalty rights to producing, profit-paying

oil properties, and that these royalties were purchased on the known amount of production; that the Syndicate's profit income was assured.

Whereas, in truth and in fact, Burkley Oil Company's well on Block 72 did not come in producing 2,000 barrels of oil per day, or any other amount of oil daily in excess of about five barrels; that Consolidated Royalty & Leasing Syndicate was not organized under the laws of Texas, but was a voluntary, unincorporated association, organized as hereinbefore set forth; that it was not formed on banking principles, but was, in fact, purely a stock-selling scheme with no assets of any value; that it did not assure positive large incomes, nor any income whatever; that said Consolidated Royalty & Leasing Syndicate was never, at any time, on a dividend-paying basis, and never declared or paid a dividend, and never had an oil well on the 300-acre tract in Iowa Park—Electra Fields, or elsewhere; and that no contract for the drilling of other wells on a fifty-fifty basis, or any other basis, was ever made, or was ever in the process of being made; that there never were 21 producing wells, or any producing wells in the immediate vicinity of said 300-acre tract in Iowa Park; that it did not own a tract of forty acres, with six producing wells, or any producing wells, fully equipped, or otherwise, delivering oil to a pipe line; that it never, at any time, owned royalty interests or leaseholds in the Ranger oil field, and its only holding or interest in or near Burkburnett was its wholly worthless royalty interest in Burkley Oil Company's well No. 1; that it did not pay dividends of 24% annually, or any dividends at all; that it never was a big Texas Giant, or any other kind of a giant, in the sense that an investment in its stock was a dividend-paying oil investment; that its lease in Iowa Park was not a proven lease in the sense that it was an oil-producing territory; that it was not about to close its books for a coming dividend, and no dividend was ever declared or paid, and no income from which a dividend could be paid was ever received by said Consolidated Royalty & Leasing Syndicate; that said Syndicate was not paying dividends at the rate of 2% monthly, or at any other rate; that the Burkley Oil Company did not, at its annual meeting, or at any other time, vote to drill up its whole lease, or any portion thereof; that said Syndicate did not, at any time, derive an income from Burkley Oil Company's well, for the reason that said well did not produce sufficient oil to pay operating expenses; that in fact, all of the stock issued by said Consolidated Royalty & Leasing Syndicate, and sold by the respondents herein, was strictly promotion stock, issued to the respondents, George F. Barton and Rockwood Brown; that the plan and policy of said Consolidated Royalty & Leasing Syndicate

did not offer to its stockholders an equitable, undivided interest, or any interest, in several hundred, or any other number of leases scattered over the 119 counties of Texas, or any counties of Texas, or elsewhere; that the Burkley Oil Well did not come in with an initial flow of 2,000 barrels, or any flow in excess of about five barrels per day, and it did not, either immediately, or at any time, put the Consolidated Royalty & Leasing Syndicate in the dividend-earning class; that the office of said Consolidated Royalty & Leasing Syndicate was never at any time literally swamped, or swamped in any sense, with orders and telegraphic reservations for stock, and never at any time received orders or telegraphic reservations for stock in excess of about $8,000.00; that it never, at any time, had something like 300 salesmen, or any number of salesmen, nor nearly 200 brokers, nor any brokers, working out of its office, but, on the contrary, the sale of the stock in said Syndicate was conducted exclusively by the respondents herein; that its royalties did not pay a monthly, or any, income from pipe-line companies direct; that, in fact, it had no income from pipe-line companies, or from any other source; that its stockholders, under the laws of Texas, were and are copartners, and each stockholder was and is individually liable for the debts of said Syndicate; that said Consolidated Royalty & Leasing Syndicate had no real, tangible assets, and therefore, the purchasers of stock therein did not become owners of a pro rata, or any other, interest in such assets; that the proceeds of the sale of stock in said Syndicate did not go, and no part of such proceeds went, to buy royalties or leaseholding interests, but, on the contrary, the proceeds of the sale of the stock in said Syndicate which was in fact sold, were received and retained by the respondents, George F. Barton and Rockwood Brown to their own use; that it was not a chartered provision in the organization of said Consolidated Royalty & Leasing Syndicate that 50% of all profits derived from the income from royalties, production of oil or sales of royalties or leases, or any profit, derived from any source, must be paid to the stockholders; that said Syndicate was not incorporated, and never had a charter, but was a voluntary association, as hereinbefore set forth; that the funds derived from the sales of stock were not invested, or reinvested in additional leases and royalties, or any leases or royalties, but all such funds were retained by said respondents, George F. Barton and Rockwood Brown, as aforesaid, and that said Consolidated Royalty & Leasing Syndicate did not offer conservative investors, or any investors, an assured, or any income whatever; that it had no guaranteed or any dividends, and its stock was wholly worthless; that said Syndicate had no royalty or other interest in either or any of the following counties or oil districts of

Texas: Beaumont, Sour Lake, San Padre, Joaquin, Caddo, Corsicana, Knowles, Bangs, Ranger and Brownwood, and had but one royalty interest in or near the Burkburnett field, viz., Burkley Oil Company's well No. 1, which royalty interest was wholly valueless; that it had no leaseholdings in the Burkburnett oil field, and its holdings in Baylor, Archer and Comanche Counties, and each of them, were of no value as oil producing properties; that the 300 acre tract referred to in said advertisement and circulars was not surrounded by oil production, and no wells producing oil were at any time located in its immediate vicinity; that it did not have, and never had any funds for such investments or any investment; that said Syndicate never had any assured profit income, or any income.

PAR. 4. That in the course of the organization of said Consolidated Royalty & Leasing Syndicate as aforesaid, the respondents George F. Barton and Rockwood Brown, with the consent of the respondents Charles N. Edwards and Claude A. Hargis, as trustees under said declaration of trust, and as individuals, received and retained to their own use, of the authorized capital stock of said Consolidated Royalty & Leasing Syndicate, 315,000 shares of the par value of $315,000.00, in consideration of the transfer to said Syndicate, by said respondents, George F. Barton and Rockwood Brown, of certain royalty rights and leases of property, which stock so received and retained by said respondents, George F. Barton and Rockwood Brown, it was understood and agreed by the respondents should be sold in preference to any treasury stock unissued by said Syndicate; that with the effect of deceiving and misleading the public into the belief that the shares of stock offered for sale and sold by said respondents and their agents and associates were shares of treasury stock of said Consolidated Royalty & Leasing Syndicate, and that the moneys arising from such sales belonged to said Syndicate, and would be used solely for the purpose of purchasing royalty rights and oil leases, and for the purpose of enabling the respondents, George F. Barton and Rockwood Brown, to unload upon the public the said 315,000 shares of said stock so retained by them, said respondents, each for himself, and in conjunction with each other, and under the control and direction of said respondents, George F. Barton and Rockwood Brown, advertised and circulated false statements, false information and false advertisements, to the effect that there was no promotion or bonus stock issued by said Syndicate; that not one dollar of promotion stock would be issued to any one; that the stock of said Syndicate would be sold for cash or in payment of leases, royalties or oil lands at cash prices; that $500,000.00 annually was a conservative estimate of the Burkley royalty; that the combined proceeds of stock sales or exchanges of the Syndicate

were being used for but one purpose—the purchase of royalty rights and oil lands or leases for Syndicate members; that said Consolidated Royalty & Leasing Syndicate was not a stock-selling company of the usual promotion type; that every stockholder came into the Syndicate on an equal footing, each paying cash—and paying par—for his or her stock; that the funds of said Syndicate were invested in royalty rights to producing, profit-paying oil properties; that not a cent of money received for stock would go for promotion; that money invested in the stock of said Consolidated Royalty & Leasing Syndicate all went to buy royalties and leaseholding interests; that every dollar invested in the stock of said Syndicate shares alike; that the entire capitalization of said Syndicate was intact, and would remain so.

Whereas, in truth and in fact, the only stock issued by said Consolidated Royalty & Leasing Syndicate was promotion stock; that the stock in said Syndicate was not sold for cash or issued in payment of leases, royalties or oil lands at cash prices, but in fact, all of the stock of said Syndicate was issued to the promoters thereof for the transfer to it of certain royalty rights and oil leases which were, in fact, worthless and of no cash, or other, value as oil producing or income producing properties; that $500,000.00 annually was not a conservative estimate, or any honest estimate of the value of the Burkley royalty, but such estimate was grossly exaggerated and untrue, and said Burkley royalty was, in fact, worthless; that the Burkley Oil Company's oil well in which said Syndicate owned said royalty interest, never produced sufficient oil to pay operating expenses, and was wrecked and abandoned by its owners; that the combined proceeds of sales of stock or exchanges to said Syndicate, were not, and neither such proceeds of sales, nor exchanges were used for the purpose of purchasing royalty rights and oil lands or leases for Syndicate members, or any of such rights or interests, but, on the contrary, the proceeds of sale of all such stock was retained by said respondents, George F. Barton and Rockwood Brown, for their own use; that said Syndicate was purely a stock-selling company of the usual promotion type; that the shareholders did not come into the Syndicate on an equal footing, and that each such shareholder did not pay cash, and pay par, for his or her stock, but, on the contrary, the entire issued stock of said company was acquired by the respondents, George F. Barton and Rockwood Brown, in exchange for worthless royalty rights and oil leases; that the funds of said Syndicate were not invested in royalty rights to producing, profit-paying oil properties, but, on the contrary, the only royalty rights ever owned or acquired, or in which said Syndicate ever had any interest, were wholly valueless; that none of the money invested

in the stock of said Consolidated Royalty & Leasing Syndicate was used to buy royalties and leasehold interests, or either or any such interests, but all of such money was retained by said respondents, George F. Barton and Rockwood Brown, as hereinbefore set forth; that the entire capitalization of said Syndicate was not intact, and did not remain so, but all of the issued stock of said Syndicate was, in fact, exchanged for worthless royalties and leaseholds—all of which statements, advertisements and representations the respondents knew to be false and misleading; and in addition to such false reports, false information, false advertising and false representations the said respondents concealed, and failed to disclose to the public the fact that said respondents, George F. Barton and Rockwood Brown, had received and retained to their own use said 315,000 shares of the stock of said Consolidated Royalty & Leasing Syndicate, and were selling the same to the public as treasury stock of said Syndicate; that as a result of the false and misleading statements, false representations, false advertisements and false information hereinbefore set forth, numerous persons, copartnerships and corporations, relying upon the same, bought stock and subscribed for stock in said Consolidated Royalty & Leasing Syndicate, to the injury of themselves and of respondents' competitors.

PAR. 5. That the respondents and each of them on behalf of himself and in conjunction with each other, and under the direction of the respondents, George F. Barton and Rockwood Brown, and in their behalf as well as in behalf of themselves, in the course of the promotion and organization of said Consolidated Royalty & Leasing Syndicate, and in the course of the sale of stock therein, in interstate commerce as aforesaid, made the false and misleading statements, false representations and false advertisements hereinbefore set forth, and made numerous other false and misleading statements and false representations concerning the plan of organization, assets, progress and prospects of said Consolidated Royalty & Leasing Syndicate, and caused the same to be published in various magazines and other publications, and to be transported through the mails and by other means to prospective purchasers of stock in said Syndicate, and by personal efforts and by the efforts of their agents, committed numerous other acts of like character, knowing their falsity and tendency to deceive the public.

PAR. 6. That by reason of the facts recited, the respondents are using unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, George F. Barton, Rockwood Brown, Charles N. Edwards and R. W. Watts, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. There was no service of a complaint on respondent Claude A. Hargis nor appearance by him in person or by counsel.

The respondents George F. Barton and Rockwood Brown, having entered appearance by their attorneys and respondents Charles N. Edwards, Claude A. Hargis and R. W. Watts, having failed to answer or appear either in person or by attorney and Rockwood Brown having filed his answer, hearing was had and evidence as to certain facts thereupon introduced in support of the complaint before an examiner of the Federal Trade Commission theretofore duly appointed, and a stipulation as to other facts having been made by and between the attorney for the Commission and the attorneys for Respondents George F. Barton and Rockwood Brown, subject to the approval of the Commission, the taking of testimony was closed, and the evidence including said stipulation reduced to writing and filed in the office of the Federal Trade Commission.

And thereupon this proceeding came on for final hearing and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH. 1. Respondent George F. Barton is a resident of the city of Los Angeles and State of California. Respondent Rockwood Brown is a resident of Billings and State of Montana. Respondent Charles N. Edwards is a resident of Kansas City and State of Missouri. Respondent R. W. Watts is a resident of Honolulu, in the Hawaiian Islands. The residence of respondent Claude A. Hargis is unknown.

PAR. 2. On or about February 26, 1919, respondent Charles N. Edwards caused to be organized, under a so-called declaration of trust, with himself as trustee, a voluntary, unincorporated association, called the Consolidated Royalty & Leasing Syndicate, having a capitalization of five hundred thousand shares of the par value of one dollar each with its principal office and place of business at Fort Worth, in the State of Texas. Thereafter, on or about July 10, 1919, respondent Rockwood Brown, sold and duly transferred to respondent George F. Barton certain so-called oil leases, for a

stipulated price of one hundred thousand dollars, who immediately thereupon transferred and assigned the same to the said Consolidated Royalty & Leasing Syndicate, and delivered to respondent Rockwood Brown 315,000 shares of the stock of said company as collateral security for payment of the said sum of one hundred thousand dollars. The instruments of transfer from respondent Rockwood Brown to respondent George F. Barton were duly filed for record while those by which the said respondent Barton conveyed said interests to the said Consolidated Royalty & Leasing Syndicate were never recorded.

PAR. 3. At the time of the transactions mentioned in paragraph 2, respondent George F. Barton was engaged in business in the city of Fort Worth, in the State of Texas, under the name and style of Barton Brokerage Company. When he transferred, as aforesaid, the certain leases acquired from respondent Rockwood Brown, to the said Consolidated Royalty & Leasing Syndicate, he entered into an agreement with respondent Charles N. Edwards, the trustee of said company, under and by virtue of which said respondent Edwards undertook to advertise and sell the stock of said company, using as the agency therefor said Barton Brokerage Company, direction of which was relinquished to him for such purpose, with the understanding that respondent George F. Barton should receive one-third of the profits derived from the sale of such stock, without any obligation to bear, or liability for, any expense connected therewith. Thereupon respondent, Charles N. Edwards and respondent Claude A. Hargis using the name and style, "Barton Brokerage Company" proceeded to procure subscriptions for and sell the stock of the said Consolidated Royalty & Leasing Syndicate, and did sell eight thousand shares thereof, to numerous persons, partnerships and corporations, residing in the various States and Territories of the United States, in direct competition with other persons, partnerships and corporations engaged in the sale/or distribution of stocks and securities, by circulating and distributing through the mail and otherwise among customers and prospective customers in such States and Territories, with the knowledge and consent of respondent George F. Barton, letters, pamphlets, and other advertising matter containing the following false and misleading statements and representations, to wit: That one lease of said Syndicate consisted of a 300-acre tract situated in the so-called Iowa Park Oil Field in Texas, which was a proven lease and that the Consolidated Royalty & Leasing Syndicate was a dividend paying oil investment, then paying dividends at the rate of 2 per cent per month, 24 per cent annually.

In truth and fact the said lease was not a proven lease within the meaning of that term as employed by oil operators or understood by the public or at all and the Consolidated Royalty & Leasing Syndicate was not then paying, had never theretofore, and has never since, paid, a dividend in any sum whatever, or earned a profit from or out of which any dividend could be legitimately paid.

Respondent Rockwood Brown had no connection with the organization or promotion of the Consolidated Royalty & Leasing Syndicate, or the advertisement or sale of its stock or any of it and neither participated in, nor was directly or indirectly connected with or responsible for any of the representations hereinbefore mentioned.

PAR. 4. The representations mentioned in paragraph 3, that the Consolidated Royalty & Leasing Syndicate owned a proven lease in Iowa Park Oil Fields, and was a dividend paying oil investment, then paying dividends at the rate of two per cent per month, twenty-four per cent annually, were false as aforesaid, had the capacity to mislead and deceive, and the natural and probable tendency and effect of them and each of them was to mislead and deceive the purchasing public.

CONCLUSION.

That the practices of the respondents George F. Barton and Charles N. Edwards under the conditions and circumstances described in the foregoing findings of fact are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent Rockwood Brown, the testimony, together with a certain agreed statement of facts and brief of counsel for the Commission, respondents having failed to file briefs, and the Commission having made its findings as to the facts with its conclusion that the respondents George F. Barton and Charles N. Edwards have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents George F. Barton and Charles N. Edwards, individually and as officers, shareholders, agents or trustees of the Consolidated Royalty & Leasing Syndicate or as officers, agents or shareholders of any other corporation, asso-

ciation or partnership and their agents and representatives, do cease and desist from directly or indirectly—

1. Publishing, circulating or distributing, or causing to be published, circulated or distributed, any newspaper, pamphlet, circular letter, advertisement or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth, any false or misleading statements or representations to the effect that the property or operation of any corporation, association or partnership is in proven oil territory, or any false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospect of any corporation, association or partnership, and

2. *It is ordered*, That this proceeding against Rockwood Brown, R. W. Watts and Claude A. Hargis be dismissed.

3. *It is further ordered*, That the respondents George F. Barton and Charles N. Edwards shall within forty (40) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

TURNER & PORTER, INC.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 965—December 7, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of business and social stationery through the use of a process which involved the application to type printing while still wet, of a chemical, and heat, and resulted in a raised letter effect closely resembling the more durable results produced by engraving, and in the sale of such stationery,

(*a*) Designated the same in its advertisements and in its business generally as "Relief-Engraving," with the capacity and tendency to deceive the public and with the effect of causing a portion thereof to purchase its products as and for genuine engraved stationery; and

(*b*) Falsely claimed that the aforesaid term had been registered in United States and Canada as its trade-mark:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. William C. Reeves for the Commission.

Mr. Willard H. Ticknor, of Buffalo, N. Y., for respondent.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Turner & Porter, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with principal place of business at Buffalo, in said State. Respondent is engaged in the business of manufacturing and selling business and social stationery, including business cards, letter heads, invitations, announcements, calling cards, etc., and causes stationery produced and sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States. In the course and conduct of its said business respondent continuously has been,

and is now, in competition with other persons, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. Respondent, in the course of its business as described in paragraph 1 hereof, produces stationery by a process which it designates as "Relief-Engraving," although such process is not engraving, and in no way includes the process of producing an impression on such stationery from engraved plates: That the stationery sold by respondent is produced upon a type press from ordinary type face, and, while the ink is still wet, a chemical in powder form is applied, so that it will adhere to the wet ink, and the stationery is then passed through a baking process in which the heat causes the chemical to fuse and present a raised letter effect, which causes stationery so produced to resemble, in appearance, to some extent, stationery upon which impressions have been made from engraved plates.

PAR. 3. That the word "engraving," particularly when applied to stationery, has been well known and understood by the public for a long period of years to include only stationery upon which there has been made an impression from an engraving, usually a copper plate, which has been cut with a graving instrument in order to form an inscription or pictorial representation: That the cost of producing engraved stationery greatly exceeds the cost of producing stationery of like stock, grade and quality produced by the process employed by the respondent, as set out in paragraph 2 hereof, and the purchasing public has indicated, and has, a decided preference for engraved stationery over stationery produced by the said process employed by the respondent, or similar processes, for the reason, among others, that the fused lettering on stationery produced by respondent's said process is easily broken and will peel, and will not retain its original attractive appearance, as will impressions from engraved plates.

PAR. 4. That respondent, as a means of inducing the public to purchase stationery from it, causes advertisements to be inserted in trade publications having general circulation through the several States of the United States, and distributes circulars, catalogues and other advertising matter to customers and prospective customers in various States of the United States, in which advertisements and advertising matter respondent makes the statement that the words "Relief-Engraving" have been registered in the United States Patent Office as the trade mark of the respondent, although no such registration has ever been had. The stationery offered for sale by

respondent is described in such advertisements and advertising matter as "Relief-Engraving," and the claim is made that respondent is the originator and sole producer of "Relief-Engraving."

PAR. 5. That respondent, through and by reason of the designation of stationery produced and sold by it as "Relief-Engraving," thereby represents to the public that such stationery is produced by having impressions made thereon from engraved plates, and such designation, and the advertisements and advertising matter of the respondents described in paragraph 4 hereof, has the capacity and tendency to mislead and deceive the purchasing public, and to induce the public to purchase such stationery upon the mistaken belief that the impressions upon such stationery were made from engraved plates.

PAR. 6. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors who are engaged in producing and selling genuine engraving, and transporting into the different States of the Union and into States other than the States where such engraving is produced, and constitute unfair methods of competition in commerce within the intent of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Turner & Porter, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer, the testimony of witnesses was taken and evidence was received, both in support of the charges stated in the complaint and on behalf of respondent, before an examiner of the Federal Trade Commission theretofore duly appointed, whereupon the trial examiner made his report upon the facts with proposed findings as to the facts, to which counsel for respondent filed exceptions.

Thereupon the matter came on for final hearing before the Commission, upon the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto by respondent, briefs by counsel for the Commission and counsel for respondent, and was orally argued by counsel, and the Commission

having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Turner & Porter, Inc., is a corporation organized in 1915 under the laws of the State of New York, with its principal office and place of business at 49 West Swan St., Buffalo, N. Y., and is now and for several years past has been engaged in the business of manufacturing and selling wedding invitations, announcements, business cards, Christmas cards, letterheads and other business and social stationery to department stores, jewelers, stationers and dealers who sell direct to the public; that respondent causes such articles of stationery so sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and in the conduct of its business has been and is now in competition with numerous persons, partnerships and corporations similarly engaged in commerce among the several States of the United States.

PAR. 2. That the stationery produced by the respondent is known and advertised to the trade under the term "Relief-Engraving," and is produced upon a type press from ordinary type faces, and while the ink is still wet a chemical in powder form is applied and by the application of heat the chemical so applied is made to fuse with the wet ink and present a raised-letter effect; that the process so described is in no way similar to the process of "Engraving" which is well known and generally understood by the public to be impressions from engraved copperplates or steel dies, which have been cut into with graving instruments in order to form an inscription or name of a person or place, is inked in by hand and hand wiped and printed on a plate press or die stamp on the card of invitation or letterhead, which process takes all of the ink out of the lines and indentations cut into the plate or die and gives the raised-letter effect so well-known in the engraving trade; that the process used by respondent and described above, is known to the dealers in said product as raised printing or imitation engraving or process work, and stationery produced by that process resembles in appearance stationery produced by the art of the real engraver which contains impressions made from engraved copperplates or steel dies; that the resemblance between the stationery produced by the two processes above described is so marked as to often confuse the trade and is often a question for expert knowledge to distinguish the raised printing or imitation engraving work from the real engraving; that the art of engraving

upon steel and copperplates has been known for centuries, while the process of the raised printing or imitation engraving is a modern process of recent development; that there is a considerable demand for the raised printing or imitation engraved stationery, but the demand for stationery so produced by the modern process is much less in volume than for the product of the real engraver; that the cost of producing engraved stationery is much greater than the cost of producing stationery by the raised letter or imitation engraving process and the real engraving is more substantial and durable as the raised printing or imitation engraving letter can be easily scraped off with the finger nail, hence more easily loses its new and attractive appearance; that the public has come to test stationery by passing a finger over the surface of the writing on a card or invitation, and if the "feel" is that of a raised surface they have come to believe that indicative of a real engraving made from a copperplate or steel die.

PAR. 3. That respondent, in the course of its business, has caused advertisements to be printed in magazines and trade publications having general circulation throughout the several States of the United States, and has published circulars, catalogues, and other advertising matter, and caused same to be distributed to customers and prospective customers in the several States of the United States, in which advertisements and advertising matter respondent made the claim that the words "Relief-Engraving" has been registered in the United States and Canada as a trade-mark of respondent, when as a matter of fact no such registration had been had; that it appears from respondent's answer to the complaint in this case that when respondent learned that its application for registration for the words "Relief-Engraving" as a trade-mark, had not been perfected and allowed, that said respondent ceased to claim in its advertisements, and advertising matter, that such words had been so registered.

PAR. 4. That the use by respondent of the word "Engraving" as a part of the compound word "Relief-Engraving" in its advertisements, in trade periodicals, and in its business generally is confusing and misleading, and has a capacity and tendency to deceive the public, who have come to believe that the word "Engraving," as applied to stationery, means an impression made upon stationery from engraved copper plates or steel dies; that this causes portions of the public to purchase said raised printing or imitation engraving believing they are purchasing work of the real engraving made from copper plates or steel dies.

PAR. 5. That respondent has pursued the policy of informing the dealers through whom it distributes stationery produced by it,

that such stationery is not engraved stationery, but that same is produced by the process described in paragraph 2 hereof; but the mere use of the word "Engraving" as a part of the compound word "Relief-Engraving" to designate the product of respondent, which is not engraving, is confusing, misleading, and capable of deceiving large numbers of the purchasing public.

CONCLUSION.

That the practice of the respondent as set forth in the foregoing findings as to the facts are in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon the briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Turner & Porter, Inc., its officers, directors, representatives, agents and employees cease and desist:

(1) From causing advertisements to be published in magazines, trade papers, or other publications of general circulation among the States of the United States, and from causing circulars, catalogues, and other forms of advertising matter, to be distributed in the several States, in which advertisements and advertising matter the claim is made that the word "Relief-Engraving" has been registered in the United States and Canada as the trade-mark of respondent, or for any similar purpose.

(2) From using "Relief-Engraving" or the word "Engraving," either alone or in combination with any other word or words, in its advertisements and advertising matter, to designate or describe stationery sold by it, the lettering, inscription or designs on which have been printed from inked type faces, electrotypes, or similar devices, and which stationery does not have thereon impressions

from engraved plates or dies, and which lettering, inscription or designs, have been given a raised letter effect by the application of a chemical in powder form to the ink while it was still wet, then subjecting same to heat thereby causing the chemical so applied to fuse with the wet ink.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within ninety days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondent in connection with the sale of its product, in interstate commerce, subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

DR. HERMAN HEUSER.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 950—December 19, 1923.

SYLLABUS.

Where the owner of patents covering a process for the manufacture of non-alcoholic beer wrote numerous letters notifying various concerns that they were operating under a process infringing his patents, advising them to discontinue the use thereof, and threatening legal proceedings to enforce such discontinuance and the payment to him of the profits derived from the use thereof, without in fact taking any such steps except in the case of two suits instituted more than a year after the sending of the above letters, and after the service of complaints upon him grounded upon the aforesaid course of conduct:

Held, That such threats against the customers or licensees of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. W. T. Roberts for the Commission.

Mr. George A. Chritton of Dyrenforth, Lee, Chritton and Wiles, Chicago, Ill., for respondent.

COMPLAINT.[1]

Acting in the public interest pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Dr. Herman Heuser, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The Baltimore Process Co. is a corporation engaged in the manufacture and sale of non-alcoholic beverages, with its principal place of business located in the city of Baltimore, State of Maryland. In the course of its business the said Baltimore Process Co. causes the products manufactured by it to be transported from its place of business in the city of Baltimore, State of Maryland, to the purchasers thereof located in other States and in the conduct

[1] As amended.

of such business is in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The said Baltimore Process Co. is the owner of certain letters patent issued to Alexander L. Straus in November, 1917, by United States Patent Office for the manufacture of certain non-alcoholic beverages and in the course of its said business it licenses other brewers and manufacturers located in several States of the United States to manufacture and sell non-alcoholic beverages under said letters patent, and said brewers and manufacturers, licensees, in the course of their business cause the non-alcoholic beverages so manufactured by them under such licenses to be transported from their places of business in the several States to the purchasers thereof located in States other than the places of manufacture, and in the conduct of said business are in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The said respondent, Dr. Herman Heuser, located at 29 South La Salle St., Chicago, Ill., was granted letters patent by United States Patent Office in May, 1919, for a process for the manufacture of certain non-alcoholic beverages and for a number of years thereafter licensed brewers and manufacturers located throughout the several States to manufacture and sell said non-alcoholic beverages under said letters patent. Pursuant to the license agreement entered into between said respondent, Dr. Herman Heuser, licensor, and said brewers and manufacturers, licensees, the said brewers and manufacturers cause the non-alcoholic beverages manufactured by them to be transported from their places of business in the several States to the purchasers thereof located in States other than the places of manufacture and in the conduct of said business are in direct and active competition with other persons, partnerships and corporations similarly engaged, including the said Baltimore Process Co. and the brewers and manufacturers who are manufacturing and selling non-alcoholic beverages as licensees under said letters patent owned by the said Baltimore Process Co.

PAR. 4. The said respondent, Dr. Herman Heuser, on June 13, 1921, and September 19, 1921, caused a letter of warning to be sent to licensees of the said Baltimore Process Co., advising them that the process they were using in the manufacture of their said non-alcoholic beverages, made under licenses granted to them by said Baltimore Process Company, was an infringement of certain patents owned by the said respondent, Dr. Herman Heuser, and threatening that unless the said brewers and manufacturers discontinued the use of the said process owned by the said Baltimore Process Co., legal

steps would be taken to compel them to discontinue the use of said process and to enforce the payment to the said respondent, Dr. Herman Heuser, of profits resulting from said use.

PAR. 5. The sending of the aforesaid letter of warning by the said respondent, Dr. Herman Heuser, in the manner and form and under the circumstances above set forth, was calculated to bring, and had the capacity and tendency of bringing the patented process of the said Baltimore Process Co. under suspicion among the brewers and manufacturers so notified as possible infringement of said letters patent owned by the said respondent, Dr. Herman Heuser; and by causing the fear of a possibility of incurring liability to said respondent in the premises, tended to intimidate and coerce said brewers and manufacturers into discontinuing the use of the process owned by the said Baltimore Process Co. and in some instances to use instead the process patented by the said respondent, Dr. Herman Heuser, and now owned by the United States Process Corporation, a corporation which was organized in January, 1922, by the said Dr. Herman Heuser and to which he assigned the said letters patent.

PAR. 6. The letters of warning and threats to sue by respondent as set out in paragraph 4 of this complaint charged that the preparations manufactured and sold by the persons holding licenses from the Baltimore Process Co. were infringements of patents held by the said respondent, such threats not being made in good faith intending to bring such suits, but for the purpose of injuring said competitors and of intimidating them, their agents, customers and prospective customers, and causing them to cease to operate under the licenses issued to them by the said Baltimore Process Co.

PAR. 7. The foregoing acts and things done by said respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to definie its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Dr. Herman Heuser, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, hearings were had before Mr. Web Woodfill, an ex-

aminer of the Federal Trade Commission theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of said complaint and on behalf of the respondent. This proceeding coming on for final hearing and the Commission having heard argument of counsel, and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Dr. Herman Heuser, is a resident of the city of Chicago, State of Illinois, and has been for more than five (5) years last past; that the said respondent was granted certain letters patent by the United States Patent Office for a process for the manufacture of non-alcoholic beer, said letters patent being of number, subject-matter, and date as follows:

No. 1302550, manufacture of non-alcoholic hopped beverages, patented May 6, 1919.

No. 1308588, preparation of alcoholic reduced beer, patented July 1, 1919.

No. 14889, manufacture of alcoholic reduced beer, reissued, June 22, 1920.

That on January 3, 1922, the said respondent transferred and assigned the above mentioned letters patent to the United States Process Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago; that said United States Process Corporation under and by virtue of the above-named patents, licenses brewers and manufacturers located in the various States of the United States to manufacture, and sell non-intoxicating, hopped beverages to licensees under said above-named letters patent; that the said United States Process Corporation is controlled by the said respondent and as licensor receives as royalty from the above-mentioned licensees for the right to operate under aforesaid letters patent, the sum of twenty-five cents per barrel of thirty-one gallons of beer manufactured under said license; that the above-mentioned brewers, licensees, caused the said hopped beer so manufactured by them to be transported from the different places of manufacture through and into various other States of the United States, to purchasers located in the various other States as aforesaid; that the said brewers, manufacturers and licensees in causing their product to be transported as herein set out, are in direct competition with other persons, firms and corporations similarly engaged, including brewers, manufacturers and licensees who are manufacturing and selling

non-alcoholic beverages under letters patent owned by the Baltimore Process Co., of the city of Baltimore, State of Maryland, which letters patent were originally procured by, and issued to Alexander L. Strauss, of the city of Baltimore, and by him transferred to the Baltimore Process Co., a corporation having its principal office in the city of Baltimore, in the State of Maryland.

PAR. 2. That the said Baltimore Process Co. is now, and for several years past has been engaged in the manufacture of certain materials which are used in the manufacture of non-intoxicating beer, which product, so manufactured is placed in barrels, sold and shipped under the name of Baltimore Process Concentrates to a great many different purchasers located in a large number of the States of the United States, which said product has been for several years sold in large quantities and shipped in interstate commerce as aforesaid; that the said Baltimore Process Company receives from the above-mentioned licensees and purchasers of said product the sum of eleven cents per pound in carload lots, and thirteen cents per pound for less than carload lots for the product manufactured under said above-mentioned letters patent. That the said product known as Baltimore Process Concentrates, is used in the manufacture of non-intoxicating beer according to the formula and process set out and described in the letters patent procured by the said Alexander L. Strauss, and now owned and controlled by the Baltimore Process Company.

PAR. 3. The letters patent secured by Alexander L. Strauss, and now owned and controlled by the Baltimore Process Company, are set out and described as follows:

(1) An application filed February 23, 1917, on which letters patent issued April 17, 1917.

(2) An application for reissue filed August 4, 1917, and the re-

issued letters patent granted on this application, November 6,

ing nonalcoholic beer filed October 15, 1917, on which patent issued May 7, 1918.

(4) An additional application was filed on November 14, 1919, 1917.

(3) An application for improvements in the process of mak-

All these letters patent set out in detail the method employed by Alexander L. Strauss in the manufacture of this product.

on which letters patent issued April 13, 1920.

PAR. 4. The respondent, on June 13, 1921, and again on September 19, 1921, caused a large number of letters to be sent to various persons, firms and corporations located in different States, notifying them that they were operating under a process for the manufacture

of near beer, which process, so used, constituted an infringement of patents held by the said respondent, naming the patents by number, which are heretofore set out and described, said patents being held by, and the property of, the said respondent; that the said attorneys on behalf of the said respondent advised the said licensees of the said Baltimore Process Company and others to discontinue the use of the said process. That on failure of the said licensees and others so to do, said attorneys, on behalf of the said respondent, would take legal steps to compel discontinuance thereof, and force payment to the said respondent of the profits derived by said licensees from the use of the said process. That among the persons, firms and corporations receiving the above-mentioned letters were the F. W. Cook Company of Evansville, Indiana, and Schmich Brothers of Freeport, Illinois; that at the time the said F. W. Cook Company received the said letter, as aforesaid, they advised the respondent's attorneys in answer to said letter that they were not using the Baltimore Process Company's product or process, and that they had not used same for more than one year previous to the receipt of said letter; that at the time the said Schmich Brothers received said letter as heretofore set out, they had ceased manufacturing near beer and were using no process of any kind.

PAR. 5. That on December 16, 1922, the Federal Trade Commission issued a complaint against the said respondent and notice of service of said complaint issued on same date and was received by respondent, in Chicago, on December 18, 1922, and respondent filed his answer in the Federal Trade Commission office on January 10, 1923. Following the filing of this complaint against respondent on January 25, 1923, the respondent filed suit against F. W. Cook Company in the United States District Court, district of Indiana, in the name of the United States Process Corporation.

On February 2, 1923, the Federal Trade Commission issued an amended complaint, the same being the complaint under which the testimony in this case was taken, and notice of service of said amended complaint issued on the same date, and the notice of service and copy of the complaint were received by the respondent, in Chicago, on February 5, 1923, and he filed his answer in the Federal Trade Commission office on February 14, 1923. Following the issuing of this amended complaint, the respondent, on the 6th day of February, 1923, caused the United States Process Corporation to file a suit against Matthias Schmich and George Schmich, doing business under the firm name of Schmich Brothers, in the United States District Court of the Northern District of Illinois, Western Division. This suit, as well as the suit against the F. W. Cook Company before

mentioned, charges that the defendants were infringing the letters patent granted to Herman Heuser, before set out and described, which letters patent were alleged at that time to be held and owned by the United States Process Corporation. At the time evidence was taken before an examiner of the Commission under this complaint both of said suits were still pending. The two suits mentioned and described in this paragraph are the only suits filed by the respondent or the United States Process Corporation for alleged infringement of the patents issued to the said respondent.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce, and constitute a violation of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the testimony and evidence received by the examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, Dr. Herman Heuser, has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Dr. Herman Heuser, his servants, agents, representatives and employees, cease and desist from directly or indirectly,

Threatening, by letters or otherwise to institute suits against manufacturers of non-alcoholic beer, for the infringement of the process claimed in respondent's letters patent, without in good faith intending to institute such suit or suits, and in fact following up such threat, or threats, with suit, or suits, brought within a reasonable time, unless such acts shall be desisted from.

It is further ordered, That respondent, within sixty (60) days after the service upon him of this order, shall 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 heretofore set forth.

MEMORANDUM OF DISSENT BY COMMISSIONER VAN FLEET.

I do not believe the necessary element of public interest exists in this case. This is not on account of the nature of the case. An often used method by those seeking the elimination of competition has been to harass weak competitors by threats of patent litigation. But in this case it would appear that applicant and respondent are equally matched and the controversy is a private one which they may settle and which will ultimately be settled in the litigation now pending.

FEDERAL TRADE COMMISSION

v.

CHAMBER OF COMMERCE OF MINNEAPOLIS ET AL.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 694—December 28, 1923.

SYLLABUS.

Where a nonstock corporation engaged in conducting a grain exchange which constituted the largest wheat market in the United States and an important center for dealings in other grain, and was operated for the exclusive use and profit of its members; its officers and members, composed chiefly of individuals and concerns engaged in the terminal elevator, line elevator, and cash and future commission business, dealing in a very large proportion of all grain received in their city, and engaged in competition with a cooperative organization and its stockholders, composed of many thousands of farmer grain growers, and with the members of an exchange, established by said organization and others, and located in a near-by city; a company engaged in the publication of a grain trade periodical sent to farmer elevator companies, independent grain dealers, farmer grain growers, and others interested in the grain trade, and captioned the "Co-operative Manager and Farmer"; and stockholders thereof, and editors of said paper; in pursuance of a conspiracy to injure and destroy the business of said cooperative organization and exchange,

(*a*) Published and circulated false and misleading statements concerning the financial standing, the business, and the business methods, of said cooperative organization and exchange, and their officers and members, by means of articles in said "Co-operative Manager and Farmer," in the "International Grain Grower and Equity Farm News", theretofore the "Official Organ" of a farmers cooperative association with which the aforesaid cooperative organization had been affiliated, and which legend the paper still bore while carrying such articles, by means of articles in other trade periodicals and daily newspapers, and by means of reprints, pamphlets, and otherwise; and

(*b*) Instituted vexatious and unfounded suits against said cooperative organization, with the intent to destroy the business of members of said exchange, and to eliminate the competition of those engaged in the cooperative marketing of grain in the city of said corporation and its members and in the surrounding territory, and with the effect of causing it expenses running into many thousands of dollars and of injuring and hindering its business; and

Where the aforesaid corporation, and its officers and members,

(*c*) Combined and conspired among themselves and with others to induce and compel its members to refuse to deal with said cooperative organization or its stockholders, or with the members of said exchange, with the intent to embarrass and destroy the business of said organization and that of its members as competitive grain dealers;

(*d*) Declined to permit the telegraph companies to furnish quotations on grain transactions in the exchange room of said corporation, to such cooperative organization or exchange;

(*e*) Passed and enforced regulations and usages prohibiting the members from conducting their business in accordance with the cooperative method of marketing grain;

(*f*) Denied admission to membership to representatives of farmer grain growers or shippers, on account of their aforesaid method of doing business;

(*g*) Passed and enforced rules and regulations which resulted in compelling shippers of grain from country points or from the aforesaid near-by city, to pay commissions and other charges not exacted of shippers from other markets; and

(*h*) Passed and enforced rules and regulations which prohibited the members from paying more for grain purchased on track at country points or from farmers or country shippers, than the market price in the city of said corporation and members, or market price of similar grain then prevailing in the exchange room of said corporation, less freight, commissions, and other charges;

With the result that said corporation, its officers and members secured and maintained a monopoly of the grain trade at said city and within one hundred miles thereof, as they conspired to do, and competition between said members and said cooperative organization and exchange, and the stockholders and members thereof, was unduly hindered and restrained;

Held, That such practices, substantially as described, constituted unfair methods of competition.

Mr. M. Markham Flannery for the Commission.

Mr. David F. Simpson of Lancaster, Simpson, Junell & Dorsey of Minneapolis, Minn., for respondents.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Chamber of Commerce of Minneapolis; the officers, board of directors, and members of the Chamber of Commerce of Minneapolis, Manager Publishing Company; John H. Adams; and John F. Flemming, all hereinafter referred to and named as respondents herein, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, the Chamber of Commerce of Minneapolis, hereinafter referred to as Chamber of Commerce, is a nonstock or membership corporation, organized and existing for the profit of its members under and by virtue of the laws of the State of Minnesota, and engaged in the business of conducting a grain exchange, or market, for the exclusive use of its members, wherein approximately 200,000,000 bushels of grain are bought, sold and exchanged annually by and between such members dealing on their own account and for the account of others; that said Chamber of Commerce is also engaged in the business of buying, selling and exchanging valuable business and commercial information consisting chiefly of price quotations of various kinds of grains and other market news which it causes to be transported by means of mail, telephone, telegraph and otherwise, to and from its said exchange located at its principal office and place of business at the City of Minneapolis, in the State of Minnesota; and to, from and among numerous other so-called regular grain exchanges and members thereof located throughout numerous States of the United States, and to and among its said members and to thousands of the general public who are not members of said exchange and who are located throughout the various States of the United States; that the Government of the respondent, Chamber of Commerce is vested in a board of thirteen directors, including its president and two vice presidents; that as a condition precedent to and in consideration for membership in said Chamber of Commerce, members are required to agree to be governed by the charter, rules, regulations, usages and customs of said Chamber of Commerce and by all amendments and additions to said rules and regulations and to bind by such agreement their heirs, executors, administrators, and assigns; that said rules provide penalties which may be imposed for violation thereof in the nature of fines, censure, suspension or expulsion; that said rules, resolutions, regulations, customs and usages of respondent Chamber of Commerce, are opposed to and prohibit members thereof from conducting their business, hereinafter described, on the principle of cooperative grain marketing providing for the payment of patronage dividends in proportion to sales and purchases on the basis of value and quantity of patronage, and prohibit admission to membership of any person or organization conducting its business on said principle of cooperative grain marketing; that the said members of the respondent Chamber of Commerce, are possessed of great financial power and that by the use thereof, and with community of stock ownership, interlocking interests, and directorates among themselves, together with the assistance of said Chamber of Commerce and other so-called

regular grain exchanges with interlocking memberships and intimate community rules, purposes and action, now have, and for several years have had, a monopoly in the selling, buying, and distributing of grain, at Minneapolis, Minnesota, and within a radius of 100 miles thereof.

PAR. 2. That the members of the respondent, Chamber of Commerce, are individuals, firms, copartnerships and corporations, who are located in the State of Minnesota and in numerous other States of the United States; that many of said members act as grain commission merchants and many others operate mills and line and terminal elevators in several States of the United States, while others are engaged in banking and various other lines of business; that among the said members are both those who buy and those who sell grain on commission, those who are actually purchasers and sellers thereof and also those who are members of firms and corporations engaged in dealing in grain, both on commission and as actual purchasers and sellers thereof and who, as members of said Chamber of Commerce, are bound in the conduct of their business and the business of said firms and corporations with which they are connected to observance of and compliance with the rules of said Chamber of Commerce; that practically all of said members in carrying on their said business, now are, and during all the times herein mentioned have been, on their own account and for the account of others, engaged in storing or otherwise handling, caring for, purchasing, selling and shipping various kinds of grain throughout the States and territories of the United States in competition with others so engaged; that the business methods, practices, and relations of the said members while so engaged in said commerce are dictated, regulated, and controlled by the rules, resolutions, customs, and usages prescribed, maintained and enforced by the respondent, Chamber of Commerce; that by reason of the size of its membership and the large number of firms and corporations with which its members are connected and which, by virtue of such connection, transact their business in accordance with the rules of said Chamber of Commerce, said Chamber of Commerce has become and is a commercial center for the transaction of business in wheat, corn, oats, rye, and other grain wherein none but said members are permitted to transact such business; that a large portion of said business is in grain purchased in States other than Minnesota for shipment to and delivery at Minneapolis, and in grain shipped from points in States other than Minnesota, to Minneapolis for sale at Minneapolis, which said grain is an article of commerce among the States and that a large part of the business transacted upon said exchange maintained by

said Chamber of Commerce is in connection with the purchase, sale and handling of such interstate shipments of grain; that many members of respondent, Chamber of Commerce, and many firms and corporations with which said members are connected, purchase and deal in grain throughout the territory tributary to Minneapolis, which includes the States of Wisconsin, Minnesota, North Dakota, South Dakota, Montana, and Wyoming, for shipment to and delivery at Minneapolis; that such members, firms and corporations purchase grain which has been shipped to Minneapolis from points within said territory upon its arrival at Minneapolis, sell and ship such grain to points in States other than the State of Minnesota and purchase and deal in grain which is in transit to Minneapolis upon the lines of the various carriers entering said city.

PAR. 3. That the respondents, C. A. Magnuson, C. M. Case, William Dalrymple, and John J. McHugh, reside at Minneapolis, Minn., and are respectively president, first vice president, second vice president, and secretary of said Chamber of Commerce; that with the exception of John J. McHugh the said respondents together with the respondents A. C. Andrews, B. F. Benson, W. F. Fraser, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, and F. C. Van Dusen who also reside at Minneapolis, Minnesota, are directors and members of said Chamber of Commerce.

PAR. 4. That there are approximately five hundred and fifty of respondent members of said Chamber of Commerce, nearly all of whom are engaged in business as hereinbefore described; that many of such members reside at the city of Minneapolis in the State of Minnesota, while some reside at other cities in said State and others reside at cities located in various other states of the United States; that all of such members are subject in the conduct of their said business to the rules, regulations, customs and usages of said Chamber of Commerce when buying, shipping or otherwise dealing in various kinds of grain and seeds shipped to, or intended for shipment to, Minneapolis, Minnesota, or when dealing in various kinds of grain and seeds at Minneapolis, Minnesota; and that said respondent members constitute a class so numerous as to make it impractical to name them all as parties respondent herein, but those designated herein are fairly representative of the whole.

PAR. 5. That the respondent, Manager Publishing Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine, having its principal office and place of business at the city of Minneapolis, in the State of Minnesota, and is the owner and publisher of a periodical or grain trade paper known

as "The Co-Operative Manager and Farmer," published at the said city of Minneapolis, State of Minnesota, and circulated among farmers, grain growers, and persons engaged in the grain trade throughout the Northwestern States and elsewhere among the States of the United States; that the respondent, John H. Adams, who resides at the city of Minneapolis, in the State of Minnesota, was a stockholder and an officer of the said Manager Publishing Company and the Editor of the said "The Co-Operative Manager and Farmer" during the time hereinafter alleged; and the respondent, John F. Flemming, who also resides at the city of Minneapolis, in the State of Minnesota, was, during the time hereinafter alleged, and still is, a stockholder and managing officer of the said Manager Publishing Company and the Editor of the said "The Co-Operative Manager and Farmer."

PAR. 6. That the Equity Co-Operative Exchange hereinafter referred to as the Co-Operative Association, is a cooperative association or corporation, organized and existing under and by virtue of the laws of the State of North Dakota, with its principal office at the city of St. Paul, in the State of Minnesota, and other offices at Fargo, N. D., Superior, Wis., and Great Falls, Mont.; that the said Co-Operative Association has approximately seven thousand stockholders, none of whom are members of the said Chamber of Commerce, and practically all of whom reside in the States of North Dakota, South Dakota, Montana, and other Northwestern States, and are engaged in the business of raising various kinds of grain and in selling and shipping it from points in said Northwestern States to the said Co-Operative Association; that much of said grain is shipped to said Co-Operative Association at St. Paul, Minn., at which place and under which circumstances the said cooperative association acts as the selling agent for its said stockholders; that much of said grain so sold is immediately shipped to points in states other than Minnesota; that while so engaged said stockholders are in direct competition with many of the respondent members of said Chamber of Commerce; that the said cooperative association is also engaged in competition with many of the respondent members of said Chamber of Commerce in the business of operating terminal elevators and elevators located at country points in states other than Minnesota, and in shipping and selling for others and on its own account, various kinds of grain bought by it and consigned to it from various States of the United States by others than its said stockholders, and in disseminating market news; that said Co-Operative Association is also engaged in generally promoting the interests and principles of cooperation; that the rules and by-laws in con-

formity with which said cooperative association conducts its business, provide for the payment of patronage dividends, or dividends based on apportionment among its patrons in proportion to patronage given, of any earnings or profits in excess of the amount required to conduct its said business; that the rules of said respondent, Chamber of Commerce, and the rules of other so-called organized or regular grain exchanges prohibit membership to any association or other organization which returns, or proposes to return, any part of its earnings or prospective earnings to patrons on the basis of such patronage dividends; that being thus barred from representation on the market controlled by said Chamber of Commerce and from representation on markets controlled by other so-called organized or regular exchanges, said Co-Operative Association opened a market at the city of Minneapolis in the State of Minnesota about the year 1912; that in the month of August, 1914, said Co-Operative Association moved to St. Paul, Minn., where in conjunction with others, it established the St. Paul Grain Exchange and became a member thereof; that during all of the time herein mentioned respondents have by means and methods hereinafter described, harassed, embarrassed, and attempted to destroy the said Co-Operative Association and the hereinafter mentioned St. Paul Grain Exchange.

PAR. 7. That the St. Paul Grain Exchange, hereinafter referred to as Competing Exchange, is a nonstock or membership corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and is engaged in conducting a grain exchange, or market, for the use of its members and all persons who desire to make use thereof, at its principal office and place of business in the city of St. Paul, State of Minnesota; that the rules and regulations of the said Competing Exchange are not opposed to, neither do they prohibit, the members thereof, when engaged in their business as hereinafter described, from conducting the same on the principle of cooperative grain marketing or the payment of patronage dividends; that the members of said competing exchange are individual, firms, copartnerships, and corporations, a number of which are engaged in the business of grain commission merchants, operating mills, line and terminal elevators, and various other lines of business; that many of said members, in carrying on their said business, now are, and during all the times hereinafter mentioned have been, engaged in purchasing, selling, shipping, storing, or otherwise handling, caring for, dealing in, and merchandizing various kinds of grain on their own account and for the account of others; that said members when

engaged in their said business, are in competition with the members of said respondent, Chamber of Commerce.

PAR. 8. That a great portion of the grain sold, purchased, shipped, stored or otherwise handled, cared for, dealt in and merchandised as aforesaid by the members of said respondent, Chamber of Commerce, by the members of said Competing Exchange, and by said other competitors not members of said Chamber of Commerce or of said Competing Exchange, consists of grain which has been shipped from various places in the State of Minnesota and from various places in states other than the State of Minnesota with the expectation on the part of the owners, shippers, sellers, and purchasers thereof, that such grain will end its transit, after it has been so sold and purchased, in states other than the state from which such grain was shipped; that such grain does in effect end its transit, with only the interruptions necessary to find a purchaser and to consummate such sale and purchase, in states other than the states from which such grain is shipped; that this is the typical constantly recurring course of the grain sold, purchased, shipped, stored or otherwise handled, cared for, dealt in and merchandised as aforesaid, and that the current thus existing is a current of commerce among the States of the United States and the selling, purchasing, shipping, storing, or otherwise handling, caring for, dealing in and merchandising of such grain as aforesaid is a part and incident of such commerce.

PAR. 9. That the said respondents are, and for more than three years last past have been, engaged in a confederation and conspiracy among themselves, entered into, carried out, and conducted with the purpose and effect of annoying, embarrassing and destroying the business of said Competing Exchange, whose rules, customs and purposes are not opposed to the cooperative plan of marketing, and to the payment of patronage dividends to producers of grain; and with the purpose and effect of annoying, embarrassing and destroying the business of said Cooperative Association and other members of said Competing Exchange and other competitors who are not members of said Chamber of Commerce, or of said Competing Exchange, thereby securing and perpetuating to the said members of said respondent, Chamber of Commerce, a monopoly of the grain trade at Minneapolis, Minnesota, and within a radius of one hundred miles thereof.

PAR. 10. That in pursuance of such conspiracy and as part thereof, respondents instituted and for more than three years last past have maintained a campaign of defamation against said Competing Exchange, said Co-Operative Association and other members thereof by printing, publishing, circulating and distributing, or causing to be printed, published, circulated and distributed, to and among

patrons and customers and prospective patrons and customers of members of said Competing Exchange, and to and among the public generally, false, misleading, and unfair statements concerning such Competing Exchange, its officers and members and the officers and stockholders of said Co-Operative Association, and their financial responsibility and methods of transacting their said business; that such statements were so published from time to time in various newspapers, periodicals and pamphlets and circulated and distributed through the various states and territories of the United States, particularly in the regular and special issues of said "The Co-Operative Manager and Farmer" and in the form of reprints therefrom and in issues of the Northwestern Grain Grower, the same being a grain trade paper published at the city of Fargo in the State of North Dakota.

PAR. 11. That as part of said campaign of defamation many of the respondents, members of said Chamber of Commerce, by and through the instrumentality and agency of their traveling solicitors, agents and employees, have made to patrons and customers, and to prospective patrons and customers, of the members of the said Competing Exchange false, misleading, and unfair statements concerning the said Competing Exchange, its officers, and members, and the officers and stockholders of said members, and their financial responsibility and methods of transacting their said business.

PAR. 12. That respondents in further pursuance of said conspiracy and as a part thereof and for the purpose and with the effect of annoying, harassing and embarrassing the said Co-Operative Association, and other members of said Competing Exchange, in the conduct of their said business, submitting them to great expense, injuring their credit and standing generally, and rendering them less able to compete with the said respondents, members of the said Chamber of Commerce, instigated and caused to be prepared for trial, and to be instituted and carried on almost entirely at their expense during the years 1914 and 1915, that certain action in the United States District Court, Fourth Division, District of Minnesota, wherein J. Emerson Greenfield and Samuel Crumpton copartners doing business as Greenfield & Crumpton, were plaintiffs; also that certain proceeding in the District Court, Third Judicial District, North Dakota, wherein Fred Schmidt, J. Emerson Greenfield and Samuel Crumpton were plaintiffs; and that certain other proceeding in the said District Court, Third Judicial District, North Dakota, wherein the State of North Dakota ex rel. Henry J. Linde, its attorney general, was plaintiff.

PAR. 13. That one of the objects and purposes of the incorporation of respondent Chamber of Commerce is "to acquire and disseminate

valuable commercial information"; that in partially carrying out such purpose it supplies telegraphic market quotations to its members and to many thousands of brokers, hotels, restaurants, and persons who are not its members; that pursuant to the said conspiracy and as part of a general plan to embarrass said Competing Exchange, its members and patrons, and to prevent its growth as a grain market, respondents Chamber of Commerce, its officers, directors, and members have continuously and persistently refused and still refuse to allow said Competing Exchange and its members to have such telegraphic quotations from the grain market which respondent, Chamber of Commerce and its members control and have influenced and induced other Chambers of Commerce and Boards of Trade and their members, to aid said respondents in preventing said Competing Exchange and its members from securing such quotations from any terminal grain market.

PAR. 14. That in pursuance of said conspiracy and as part of such general plan to embarrass said Competing Exchange and its members in the course of its and their said business and for the purpose and with the effect of destroying said Competing Exchange as a grain market and destroying the business of its members as competitive grain dealers, respondents, Chamber of Commerce, its said officers, directors and members, have boycotted and continuously and persistently refused to buy grain from the said Co-Operative Association, member of said Competing Exchange; that said boycott is sought to be maintained among other ways, by the adoption, enforcement and interpretation of certain resolutions, or special rules, directed against, and prohibiting certain classes of members from dealing with the said Co-Operative Association, member of said Competing Exchange; that said resolutions or special rules read in part as follows:

CIRCULAR NO. 405.

OCTOBER 8, 1912.

Whereas, From time to time certain individuals, firms, and corporations, not members of the Chamber of Commerce, engage in business in the Cities of Minneapolis, St. Paul, or elsewhere, and solicit shipments of grain from farmers and others; and

Whereas, The above mentioned individuals, firms, and corporations in many cases employ members of the Chamber of Commerce to sell the grain so received for them, for which the regular commission is charged; and

Whereas, In many cases the shipments are secured from the country shipper entirely as result of false statements made by the individuals, firms, and corporations above mentioned, to the effect that by shipping to said individuals, firms, or corporations (not members of the Chamber of Commerce), the shipper would avoid the payment of any commission whatever, and would have his grain sold for as high a price as could be secured in the Exchange Room of the Chamber of Commerce; or that a less commission would be charged for selling the grain than that provided by the rules of the Chamber of Commerce; and

Whereas, In fact, the shipper in many cases pays two commissions, which fact is entirely concealed from him by various methods; and

Whereas, The action of the members of the Chamber of Commerce in selling the grain for the above mentioned individuals, firms or corporations on the floor of the Exchange Room assists them in carrying on such fraudulent business; and

Whereas, The Chamber of Commerce has no control over such fraudulent conduct or such representations, except to regulate its own members in the furtherance of such schemes, and

Whereas, This Association is willing for its members and all others to do legitimate trading in the grain business, and does not wish to curtail the trade of individuals outside of its Association where not done in fraud or on misrepresentations to the shippers; and

Whereas, It is the opinion of the Board of Directors of this Association that the members of this Association should be regulated so as not to allow them to handle grain of any kind which is procured under circumstances such as are above mentioned, or any other circumstances which mislead the shipper into believing that he is getting the advantages of this Association when in fact he is not getting such advantages; and

Whereas, It is quite necessary that this Association keep complete control of its members to require them, and all who represent them to transact business with the shippers in perfect good faith;

Now, therefore be it resolved, That members of the Chamber of Commerce are hereby forbidden to act in any manner as the agent or representative of any individuals, firms or corporations, in the cities of Minneapolis, St. Paul or elsewhere, not members of the Chamber of Commerce, who are soliciting shipments of grain from the farmers or country shippers in the manner above mentioned, or through any scheme, artifice or device, by which this Association is falsely represented, either in its dealing or in the right which the shippers get with respect thereto, or at all, unless the person so soliciting such shipment can show a written statement of the shipper to the effect that he realizes that the person receiving such shipment is not a member of the Chamber and can not get advantages out of the Chamber which he could not himself get.

THE CHAMBER OF COMMERCE
Secretary's Office.

CIRCULAR No. 634.

JANUARY 11, 1916.

To members:

Your very careful attention is called to the following resolution which was unanimously adopted by the Board of Directors at a meeting held this date, and made effective immediately.

Yours respectfully,

JOHN G. McHUGH, *Secretary.*

Whereas there are persons in the grain trade, not members of this Association, still using the practices prohibited to members of this Association by the resolution of October 8, 1912, (Circular No. 405), and

Whereas, Some of such persons use various schemes and pretenses to fraudulently conceal the fact that the farmers and other shippers pay more than reasonable amounts to market their grain through them, and

Whereas, Some of such parties have induced some members of this Association to make purchases of that grain outside of the Exchange at prices so low that the member of the Chamber of Commerce can sell it in the Exchange room of the Chamber of Commerce at unreasonable gains to himself, thus causing the shipper to pay, in form but one commission, but in effect, the equivalent of from two to ten commissions, and

Whereas, the farmers and country shippers are, in the average cases unable to either know or ascertain the real truth with respect thereto, and

Whereas, It is the policy of this Association to prevent its members from dealing for bucket-shops or others carrying on schemes whereby the public is defrauded in grain matters,

Now therefore be it resolved, That no member of this Association, either as owner or commission merchant or at all, shall hereafter sell any grain in the Exchange Room of the Chamber of Commerce of Minneapolis, which such member knows, or has reason to believe was originally consigned to any one either as commission merchant, or otherwise, from either farmers or country shippers as the result of any of the fraudulent or wrongful practices or methods described in said Resolution of October 8, 1912, or herein.

Be it further Resolved, That it is the opinion of the Board of Directors of this Association that the making of either profits or commissions which directly or indirectly result from deception practiced upon shippers in the marketing of their grain can not be too strongly condemned at all times, by all people, and in all places.

PAR. 15. That said respondents, Chamber of Commerce, its said officers, directors and members, have for more than three years last past promulgated and effectively enforced by means of severe penalties, and otherwise, rules, resolutions, regulations, customs, and usages other than the rules referred to in paragraph 14 hereof, which aid said respondents in maintaining said monopoly and in carrying out said conspiracy and in furthering their general plan of destroying said Competing Exchange as a grain market and in destroying the business of the members of the said Competing Exchange; that among others thereof is Rule VIII of the general rules of the respondent Chamber of Commerce, otherwise known as the "Uniform Commission Rule"; that said rule suppresses and destroys competition between said respondents, members of said Chamber of Commerce, in the conduct of their aforesaid business, discriminates against nonmembers in favor of members, depresses prices paid for grain bought by said respondents, members, from producers and other shippers, compels said respondent members when purchasing grain "on track" at country points for shipment to Minneapolis to impose an arbitrary charge on grain in the guise of a commission when no commission or other service is rendered the seller thereof, for the purpose and with the effect of eliminating competition between such purchasers and respondent members acting as commission merchants, discriminates against producers and country shippers by requiring the regularly prescribed commission rates to be charged on

grain shipped to Minneapolis from country points and from certain terminal markets while exempting from the payment of such commission rates grain so shipped from other favored terminal markets, establishes unreasonably high rates not justified by the service rendered, with the purpose and effect of arbitrarily keeping more members in the commission business than competition would justify if competition were allowed to exist, and by arbitrary interpretation of such rule prohibits and prevents said members from transacting their said business on the principle of cooperative marketing or the payment of patronage dividends hereinbefore described and renders ineligible to membership in respondent Chamber of Commerce all individuals, firms, copartnerships and corporations conducting their business on such cooperative or patronage dividend principle; that said rule is in part as follows:

SEC. 10. In addition to the above, there shall be charged such legitimate expenses as are necessarily incurred in caring for the property and guarding the interests of both consignor and consignee, including interest on advances at the legal rate then in force in Minnesota. Nothing in this rule shall be so construed as to prevent any special agreement between consignor and consignee by which a higher rate of commission may be charged in special cases.

Every member of this Association, and every person, firm and corporation admitted to trade or to do business therein, hereafter buying directly or indirectly, for his, their or its own account or otherwise, any grain or seeds dealt in upon this exchange, in car load lots on track at country points, for shipment to Minneapolis, or buying any of the same to be delivered at Minneapolis, shall make their bids, offers and purchases therefor on the basis of the Minneapolis market values less commission or a profit at least equal to the established rates of commission on said grain or seeds; and in addition such bids, offers or purchases shall be made subject to the usual and the same charges of this Association, to include, and they shall include, switching, inspection, weighing, freight—if a "delivered" bid and freight on dockage if a "track" bid—interest on advances, and all other charges according to the rules of this Association, the same as if said grain or seeds were handled on commission through said Association, and they shall render an account to the seller for all such purchases, including said charges separately stated in detail; and any person, firm or corporation who shall violate any of the provisions of this section shall be liable and subject to the same penalties as are provided in Section II of Rule VIII and Section 7 of Rule IV of the General Rules of this Association.

SEC. 11. Every member of the Association, and every person, firm and corporation admitted to trade, or to do business therein who shall charge less than the regular rates of commission established by the rules of the Association; or shall assume, or rebate, any portion of the same; or shall, with intent to evade in any way directly or indirectly, the regular rates of commission established by the rules of the Association, purchase, or offer to purchase, any grain or seed consigned to him, them, or it, for sale; or shall, with intent to cut, or to evade in any way directly or indirectly the regular rates of commission established by the rules of the Association, purchase, or offer to purchase any grain, or seed on track, at any railway station outside of, and for delivery at the city of Minneapolis; or shall make or report any false or fictitious

sales or purchases; or shall resort to any method of accounting directly or indirectly in violation of, or contrary in purpose and effect to a strict adherence to the regular established rates of commission of the Association; or shall, with intent to evade the regular rates of commission established by the rules of the Association, directly or indirectly pay, or give, or offer so to do, any money, or other consideration of whatsoever nature to any person, to procure or influence shipments or consignments of grain or seed in any form; or shall, with intent to cut or to evade in any way directly or indirectly the regular rates of commission established by the rules of the Association, make use of any shift or device whatsoever, shall be deemed guilty of violating the rules of the Association establishing rates of commission, and, on conviction thereof, shall be fined by the Association not less than $250.00, nor more than $1,000 as the Board of Directors may determine, such sum to be paid into the general fund of the Association.

Any charge of violation of the foregoing provision, or any part thereof, shall be by complaint in writing, filed with the Secretary of the Association. The party charged shall be summoned by written notice from the Secretary, and shall appear before the Board of Directors of the Association, who shall investigate and try the charge.

The enforcement of the provisions of this section of this rule shall not in any manner prevent the enforcement of additional penalty for the violation of any rules as provided for in Section 7, of Rule IV, of these rules and by-laws.

The board of directors shall offer a reward not exceeding $1,000 to any person who shall furnish evidence that does convict any member of the Chamber of Commerce, or any firm, corporation, or party admitted to trade or to do business in the Chamber of Commerce, of a violation of the established rates of commission; the object of this rule being to prevent the demoralization resulting from the giving, either directly or indirectly, of compensation to station agents, elevator agents, bankers, brokers, merchants, or any other parties, at any locality whatsoever, to influence shipments of consignments of grain. But this rule shall not prevent the regular employment by members of this Association of traveling men, but shall prohibit a division of commissions with such traveling men who are not resident members of this Association.

PAR. 16. That respondents, Chamber of Commerce, its officers, directors, and members are materially aided in carrying out said conspiracy and general plan to destroy said Competing Exchange as a grain market and said members of said Competing Exchange as competing grain dealers by means of contracts and arrangements binding country shippers to ship all or the greater part of their grain to the said Chamber of Commerce members financing such shippers; that such contracts and arrangements are made possible and effective by reason of said respondents' control of great financial power and by interlocking interests within and without said Chamber of Commerce and used for the purpose and with the effect of unduly controlling country shippers in the manner and method of both purchasing and disposing of grain.

PAR. 17. That by reason of the foregoing facts, respondents have been, and are, using unfair methods of competition in commerce

within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Chamber of Commerce of Minneapolis; the Officers, Board of Directors, and Members of The Chamber of Commerce of Minneapolis; all hereinafter referred to and named as respondents herein, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interests of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the several recitals in paragraphs 1, 2, 3, 4, 6, 7, and 8 of Count I, hereof, are herein charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. That respondents instituted and for more than three years last past have maintained a campaign of defamation against competitors by printing, publishing, circulating, and distributing, or causing to be printed, published, circulated, and distributed, to and among patrons and customers, and prospective patrons and customers, of said competitors and to, and among, the public generally, false, misleading and unfair statements concerning such competitors and their financial responsibility and methods of transacting their said business; that such statements were so published from time to time in various newspapers, periodicals and pamphlets and circulated and distributed through the various States and Territories of the United States, particularly in the regular and special issues of said "The Co-Operative Manager and Farmer" and in the form of reprints therefrom and in issues of the Northwestern Grain Grower, the same being a grain trade paper published at the city of Fargo, in the State of North Dakota.

PAR. 3. That said respondents by and through the instrumentality and agency of their traveling solicitors, agents and employees, are now making and for more than three years last past have made to patrons and customers, and to prospective patrons and customers, of competitors, false, misleading and unfair statements concerning said competitors, and their financial responsibility and methods of transacting their said business.

PAR. 4. That respondents, for the purpose and with the effect of annoying, harrassing and embarrassing competitors in the conduct of their said business, submitting them to great expense, injuring their credit and standing generally, and rendering them unable to compete with the said respondents, members of the said Chamber of Commerce, instigated and caused to be prepared for trial, and to be instituted and carried on almost entirely at their expense certain legal actions or proceedings recited and described in paragraph 12 of Count I of this complaint and the said commission relies on said recital and description to the same extent as though the allegations thereof were set out at length herein, and said recitals are incorporated herein by reference and adoption as part of the allegations of this count.

PAR. 5. That one of the objects and purposes of the incorporation of respondent Chamber of Commerce is "to acquire and disseminate valuable commercial information"; that in partially carrying out such purpose it supplies telegraphic market quotations to its members and to many thousands of brokers, hotels, restaurants and persons who are not its members; that for the purpose and with the effect of annoying and embarrassing said Competing Exchange, its members and patrons, and to prevent its growth as a grain market, respondent Chamber of Commerce, its officers, directors, and members have continuously and persistently refused and still refuse to allow said Competing Exchange and its members to have such telegraphic quotations from the grain market which respondent, Chamber of Commerce and its members control and have influenced and induced other Chambers of Commerce and Boards of Trade and their members, to aid said respondents in preventing said Competing Exchange and its members from securing such quotations from any terminal grain market.

PAR. 6. That said respondents for the purpose and with the effect of annoying and embarrassing said Competing Exchange and its members in the course of its and their said business and for the purpose and with the effect of destroying said Competing Exchange as a grain market and destroying the business of its members as competitive grain dealers, respondents have adopted, and are now enforcing certain resolutions, or special rules, directed against, and prohibiting certain classes of members from dealing with, the said Cooperative Association, member of said Competing Exchange; that said resolutions or special rules are set out in part in paragraph 14 of count or division I of this complaint and said Commission relies thereon to the same extent as though said parts of such resolutions or special rules were set out at length herein, and said

parts of such resolutions or special rules, are incorporated herein by reference and adopted as part of the allegations of this count or division.

PAR. 7. That said respondents have for more than three years last past promulgated and effectively enforced by means of severe penalties, and otherwise, rules, resolutions, regulations, customs, and usages, other than the rules referred to in paragraph 6 hereof, which suppress and destroy competition; that among others thereof is Rule VIII of the General Rules of respondent Chamber of Commerce, otherwise known as the "Uniform Commission Rule"; that said rule suppresses and destroys competition between said respondents, members of said Chamber of Commerce, in the conduct of their aforesaid business, discriminates against nonmembers in favor of members, depresses prices paid for grain bought by said respondents' members, from producers and other shippers, compels said respondents' members, when purchasing grain "on track" at country points for shipment to Minneapolis to impose an arbitrary charge on grain in the guise of a commission when no commission or other service is rendered the seller thereof, for the purpose and with the effect of eliminating competition between such purchasers and respondent members acting as commission merchants, discriminates against producers and country shippers by requiring the regularly prescribed commission rates to be charged on grain shipped to Minneapolis from country points and from certain terminal markets while exempting from the payment of such commission rates grain so shipped from other favored terminal markets, establishes unreasonably high rates not justified by the service rendered, with the purpose and effect of arbitrarily keeping more members in the commission business than competition would justify if competition were allowed to exist, and by arbitrary interpretation of such rule prohibits and prevents said members from transacting their business on the principle of cooperative marketing or the payment of patronage dividends hereinbefore described and renders ineligible to membership in respondent Chamber of Commerce all individuals, firms, copartnerships, and corporations conducting their business on such cooperative or patronage dividend principle; that said rule is set out in part in paragraph 15 of count or division I of this complaint and said Commission relies thereon to the same extent as though said part of such rule was set out at length herein, and said part of such rule is incorporated herein by reference and adoption as part of the allegations of this count or division.

PAR. 8. That said respondents, members of said Chamber of Commerce, in the course of their said business are now and for more than

three years last past have been, by means of contracts and arrangements, binding country shippers to ship all or the greater part of their grain to the said Chamber of Commerce members financing such shippers; that said contracts and arrangements are made possible and effective by reason of said respondents' control of great financial power and by interlocking interests within and without said Chamber of Commerce and used for the purpose and with the effect of unduly controlling country shippers in the manner and method of both purchasing and disposing of grain.

PAR. 9. That by reason of the foregoing facts, respondents have been, and are, using unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, the Chamber of Commerce of Minneapolis, the officers, board of directors, and certain members as fairly representative of the whole number of members as a class so numerous as to make it impractical to name them all as parties respondent herein; Manager Publishing Company, John H. Adams, and John F. Flemming, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Respondents, The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, jr., H. S. Helm, Asher Howard, John McLeod, N. H. MacMillan, and F. C. Van Dusen, named in the complaint as representative of the whole number of members; and as officers and directors of said Chamber of Commerce; John G. McHugh; Manager Publishing Company; John H. Adams and John F. Flemming, each of them having entered their appearance by their attorneys and having each filed their answers to said complaint, and having entered into a stipulation in writing as to the facts, thereupon this proceeding came on for final hearing, and the Commission being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That in 1881, the respondent, the Chamber of Commerce of Minneapolis, was incorporated under the laws of the State of Minnesota; that continuously ever since said date it was, and is now, a nonstock or membership corporation engaged in the business of conducting a grain exchange for the exclusive use and profit of its members. The said grain exchange was at all times mentioned in the complaint the largest wheat market in the United States. Within it about two hundred millions of bushels of grain grown in the States of the Northwest are annually bought, sold and dealt in in said exchange room, by said members. It has bought, sold and exchanged with others, commercial information consisting, among other things, of price quotations. These it caused to be transmitted from its place of business in Minneapolis to other grain exchanges and members thereof located in various States of the Union, and the said chamber received similar price quotations from other grain exchanges located in other States. During all of the times mentioned in the complaint in this case it neither bought nor sold grain. That at all times herein mentioned it has had its office and principal place of business in the city of Minneapolis, State of Minnesota.

PAR. 2. That the business, government, policies and control of the said Chamber, during all the times mentioned herein was, and is now, vested in a board of directors, including a president, and two vice presidents; that as a condition precedent to admission to membership in said Chamber and in consideration for membership therein, all applicants have been required by said Chamber to agree, and those admitted did agree, to be governed by the charter, rules, regulations, usages and customs of said Chamber and by all the amendments thereto, and to bind their heirs, executors, administrators and assigns to be so governed.

PAR. 3. That the business, practices and methods of the said members, while engaged in buying, selling, shipping, storing and otherwise handling grain, have been and are regulated and controlled by said charter, rules, regulations, usages and customs. That the size, power and influence of the individual members themselves, and their various business connections were such that the said Chamber became and was during the times named herein an important center for the transaction of business in wheat, corn, oats, rye and other grain.

PAR. 4. That until about 1915 the number of members in said Chamber was limited, and the average price in Minneapolis for membership ranged from $3,500 to $4,000; that since said date the num-

ber of members has been unlimited, and the membership fee has been raised to $15,000, so that at the time of the filing and issuance of the complaint herein, the members of the said Chamber were so numerous that all of them could not, at that time without manifest inconvenience and oppressive delay, be made parties therein; that the respondents, C. A. Magnuson, C. M. Case, William Dalrymple, and John G. McHugh, were for the fiscal year of 1917–1918, respectively, president, first vice president, second vice president, and secretary of said Chamber of Commerce; and with the exception of said John G. McHugh, the said respondents, together with the respondents, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan and F. C. Van Dusen, were directors and members of said Chamber of Commerce and were all residents of the city of Minneapolis and were each and all of them, fairly representative of the entire membership of said Chamber; that many of the above-named parties are members of said Chamber, and are now, and were at the time of and for some time preceding the issuance of the complaint herein, engaged personally or as an executive officer of a corporation which did trade as a member of the Chamber of Commerce as aforesaid in buying, selling and handling grain in interstate commerce in the city of Minneapolis, State of Minnesota, and throughout adjoining States.

PAR. 5. That the membership of the said Chamber is composed chiefly of individuals, firms and corporations engaged in the terminal elevator, line elevator, and cash and future commission business. Besides these groups the said Chamber numbered among its members several representative millers, and other grain converters, and also those not engaged in the grain trade.

The terminal elevator members, with some exceptions, are those who purchased grain in carload lots either in the Minneapolis market, or outside that market, to arrive or to be shipped to that destination, or on track f. o. b. at the shipping point, from country elevators and other shippers in the States of Minnesota, North Dakota, South Dakota and Montana. Part of the grain thus purchased was sold by them locally at Minneapolis, and part of it sold and shipped to mills, grain dealers and others located in various States and Territories outside of Minnesota.

The line elevator members of said Chamber, were those engaged in the business of buying grain upon their own account through lines or chains of grain elevators located at various country shipping points in Minnesota and also, with exceptions, in North and South Dakota, Montana and other States. The grain thus purchased was shipped by them from these elevators, located in numer-

ous instances outside the State of Minnesota, to commission houses located in Minneapolis, where it was sold by them on a commission basis or was sold on track or to arrive, and then shipped either to members of the said Chamber, or to grain dealers located in Minnesota or outside of said State.

The cash commission members of said Chamber were engaged in the business of receiving grain on consignment from country shippers located primarily in North and South Dakota, Montana and Minnesota, and in handling of to arrive sales for such shippers. In connection with such operations many, if not all of the cash commission members solicited the business of such country shippers through travelling solicitors. Through these travelling solicitors the said cash commission members sought the grain business of such shippers, financed by loans of money, the grain buying operations of such of them as became their customers, bought and sold futures for such customers, supplied price quotations and other market news and supervised the operations and account of such shippers.

The future commission house members executed buying and selling orders for grain for future delivery at Minneapolis received by them from country and terminal elevators, mills, exporters, mills and converters, and others. The execution of these orders by such members of the said chamber was made in its exchange room and affected the cash and future prices of grain within the State of Minnesota and in other States where grain is bought and sold either for spot or future delivery. That in all of these kinds of grain business transactions the said members were in competition with others not members of said chamber and especially were in competition with the equity Cooperative Exchange and its stockholders, save in the matter of dealing in futures, and with the members of the St. Paul Grain Exchange.

Many of the respondents herein engaged in two or more of the various above-described activities.

That during the times mentioned in the complaint about 90 per cent or more of all grain received at Minneapolis was shipped to and dealt in by members of the respondent Chamber. Over 60 per cent was, during that time, shipped into Minneapolis from states other than Minnesota. About 44 per cent was ground at Minneapolis into flour and other grain products by members of the respondent Chamber, and the greater part of such flour or products was shipped to various states of the United States and into foreign countries. Much grain while in transit from other states than Minnesota to points in states other than its place of origin was bought and sold in the exchange room of the respondent Chamber. Some of this grain was bought by respondent members "on track" at country points

either within or without Minnesota and shipped to Minneapolis, and contracts were made in the exchange room for the purchase and sale of grain to be shipped from other states to Minnesota at a future date or within a specified time. About 65 per cent of all grain received at Minneapolis was shipped on the consignment basis during the years 1913–1917. More than one-half of the grain dealt in on the floor of the respondent chamber was permitted a "stop over" at Minneapolis for the purpose of finding a purchaser or to be cleaned, stored or mixed with other grain, or converted into flour or other grain products, and then either in its original, improved or converted condition, moved on its journey to its final destination.

PAR. 6. That on or about February 17, 1911, the Equity Cooperative Exchange was incorporated under the laws of the State of North Dakota to buy, sell, ship, store and otherwise handle grain, seed, etc., in state and interstate commerce, and on or about August 1, 1912, opened an office and place of business in Minneapolis, Minn.; that thereafter and in August, 1914, it moved to St. Paul, Minn., where in conjunction with others it established the St. Paul Grain Exchange, and then became and ever since has been a member thereof. Since August, 1914, it has had its principal office and place of business at St. Paul, Minn., and other offices and places of business at Fargo, N. D., Superior, Wis., and Great Falls, Mont. As a cooperative association its regulations required it, after all of its expenses and stock dividends were paid, to distribute the balance of the moneys derived from sales and commissions, if any, among its stockholders in proportion to the patronage it received from them.

The stockholders of the said Equity Cooperative Exchange numbered about 7,000 in May, 1917, and this number had increased to about 17,500 in September, 1922. None of them were members of the said Chamber. Practically all of these stockholders resided in North Dakota, South Dakota, Wisconsin, Minnesota, and Montana. They were engaged in raising wheat, corn, oats, rye and other grain in said States and in shipping the same to the said places of business of the Equity Cooperative Exchange to be sold by it as agent for its said stockholders, or to be bought and sold by it on its own account. A great deal of said grain is sold and shipped by it for said stockholders or itself to purchasers located in places outside of Minnesota.

The Equity Cooperative Exchange itself owned and operated about seventy-five line and terminal local grain elevators located at various points in Minnesota, and North and South Dakota. At these elevators it bought and received grain, shipped it to St. Paul, Minn., and Superior, Wis., and there sold the grain on its own account. For the convenience of itself and stockholders it owned and operated at St. Paul a terminal elevator with a capacity of 750,000

bushels, in which it stored grain for itself and stockholders. About 90 per cent of the stock of the said Exchange was owned by individuals who were actively engaged in the production of grain. That, based upon its financial statement, the application of the Equity Cooperative Exchange to the Duluth Board of Trade for membership therein was favorably passed upon by that body, and the said exchange was, on or about October 15, 1922, made a member of said board of trade.

In the above mentioned transactions of buying and selling grain as agent for its stockholders and others and on its own account, and in its operation of its line and its terminal elevators, the said Equity Cooperative Exchange and its stockholders were engaged in intrastate and interstate commerce in competition with many of the members of the said Chamber of Commerce as set forth in paragraph 5 hereof.

PAR. 7. The St. Paul Grain Exchange was a nonstock membership corporation organized August 1, 1914, under the laws of Minnesota to conduct a grain exchange and trading place for the use of its members and other growers of grain. It neither buys nor sells grain. Its office and principal place of business was at St. Paul, Minn. Its membership consisted of individuals, copartnerships and corporations, many of whom were in competition with members of the respondent Chamber of Commerce engaged in buying, selling, shipping and warehousing of grain in interstate commerce. The rules and regulations, by which it and its members were governed in said commerce, did not prohibit, as did the rules of the said Chamber, cooperative marketing, but did permit its members, after all expenses were paid, to distribute the balance, if any, of moneys received from sales and commissions, among their members in proportion to the patronage it received from them.

PAR. 8. The respondent Manager Publishing Company was a Maine corporation organized in 1910 and its office and principal place of business in Minneapolis. Since then it has owned and published at Minneapolis a grain trade periodical entitled the "Cooperative Manager and Farmer" which it sent to farmer elevator companies, independent grain dealers, farmer grain growers and other persons interested in the grain trade of the United States and especially in the Northwest.

The respondent John H. Adams and John F. Flemming were at all of said times residents of Minneapolis and stockholders of the said Manager Publishing Company, and the said Adams was editor of the "Cooperative Manager and Farmer" until October 1916, when the said Flemming succeeded him as editor. The policy of the

"Cooperative Manager and Farmer" during all of said time was dominated and controlled by the Secretary of the respondent Chamber who furnished the data and material for a great number of articles showing the policy hereinafter described.

PAR. 9. For the guidance and control of its members the Chamber of Commerce passed certain rules and regulations called General Rules. Of these, Rule VIII, usually known as the "Uniform Commission Rule," was first passed in 1882. This rule with its amendments required at the times mentioned in complaint all members to charge for their services, for which commissions are charged not less than certain minimum prescribed rates stated therein, when dealing in specified kinds of grain. The said rule required in Section 10 that:

> Every member of this Association, and every person, firm and corporation admitted to trade or to do business therein, hereafter buying directly or indirectly, for his, their or its own account or otherwise, any grain or seeds dealt in upon this exchange, in carload lots on track at country points, for shipment to Minneapolis, or buying any of the same to be delivered at Minneapolis, shall make their bids, offers and purchases therefor on the basis of the Minneapolis market values less commission or a profit at least equal to the established rates of commission on said grain or seeds; and in addition such bids, offers or purchases shall be made subject to the usual and the same charges of this Association, to include, and they shall include, switching, inspection, weighing, freight—if a "delivered" bid and freight on dockage if a "track" bid—interest on advances and all other charges according to the rules of this Association, the same as if said grain or seeds were handled on commission through said Association; and they shall render an account to the seller for all such purchases, including said charges separately stated in detail; and any person, firm or corporation who shall violate any of the provisions of this section shall be liable and subject to the same penalties as are provided in Section 11 of Rule VIII and Section 7 of Rule IV of the General Rules of this Association.

PAR. 10. Rule VIII required all members when buying grain "on track" at country or other points, for shipment to Minneapolis, to pay no more than the price of the same grain made by the respondent members in the exchange room of the respondent Chamber (called "Minneapolis base price") less the regularly prescribed commission rate, or a profit equal to said rate exclusive of freight and other charges. This rule in this respect did not apply to the purchase of grain from Omaha, Kansas City, and other terminal markets, except at St. Paul, Minnesota.

It did not, however, prevent the members from paying less than the said base price for such grain but prohibited them from paying more, and had a tendency to depress grain prices. The rule prohibited a member when buying on his own account car load lots of grain "on track" at country points from paying more than the

Minneapolis base price, less freight and other charges, including the amount of the commission rate prescribed by the said rule. That is, the rule required the said member, in said purchases, to make a charge against the grain in the guise of a commission when no commission service was rendered, and prohibited the members, under a heavy penalty, from paying more for grain "on track" in car load lots at country points for shipment to Minneapolis than the shipper would receive for his grain were it being sold at that time in the exchange room of the said Chamber in a commission transaction. The effect of this was to place "on track" purchases of grain precisely upon the same basis as commission transactions in Minneapolis, and gave to the shipper of grain in car load lots at country points to Minneapolis the same amount for his grain whether he consigned it to Minneapolis to be sold on commission by a member of the Chamber, or whether he sold it outright "on track" at country points or "to arrive" to a member of the respondent Chamber.

To enforce its provisions on this point the rule offered a reward of $1,000 to any informant that would furnish evidence that would convict a member or a concern represented by membership of a violation thereof. The penalty provision of the said rule has been enforced by the said chamber in a number of instances and the penalty imposed.

PAR. 11. Rule VIII in section 11 forbade any person doing business in the chamber to charge less than, or to evade directly or indirectly, the regular commission rates established by the rules of the chamber, or to assume or rebate any part thereof and punished a violation thereof by a fine of not less than $250 or more than $1,000. The penalty provision of this portion of the rule has also been enforced and the penalty imposed.

Under this rule, and additional special rules passed for the purpose, the chamber refused membership in it to cooperative associations such as the Equity Cooperative Exchange, which returned to the shipper earnings or surplus in proportion to the amount of patronage received, and prohibited the respondent members from dealing with the said Equity Cooperative Exchange.

This action on the part of the chamber hindered and suppressed competition from the cooperative terminal marketing of grain in the Northwest, and protected members of the respondent chamber from the competition of cooperative associations.

PAR. 12. One of the main functions of the said chamber was to maintain an exchange room and trading facilities for the exclusive use of its members. In this room the members made sales and purchases of cash grain and grain futures either upon their own account or for others as stated in paragraph 5 of these findings.

PAR. 13. To the floor of this exchange room the chamber invited and admitted public telegraph companies to gather the continuous quotations of prices on the sales of grain offered and accepted as aforesaid in the exchange room during its business hours. These quotations, as soon as made, were received by the telegraph companies in the said room and were immediately sent by telegraph lines and instruments to all of the principal towns and cities, and by means of ticker circuits to the places of business of all who desired to receive and pay for the same. The quotations consisted of two kinds, to wit, "continuous" quotations which meant a telegraphic service supplying price quotations oftener than ten minute intervals, and "periodical" or "interval" service, which consisted of supplying price quotations at intervals of more than ten minutes.

PAR. 14. Grain exchanges have, for many years past, by trade usage and custom, been accustomed to permit telegraph companies to furnish, and, in accord with such usage and custom, the said telegraph companies did furnish continuous and interval service to other grain exchanges. By the same usage and custom each exchange also permitted its members to furnish its own quotations to their customers upon terms and regulations agreeable to the exchange, irrespective of the importance or the volume of the business done, provided the exchange and its members and their customers did not publish or make a wrongful use of such quotations. And the respondent chamber has at all times permitted telegraph companies to furnish its "periodical" quotations to many thousands of nonmembers, some of whom were not in the grain business.

PAR. 15. Until October 6, 1902, the respondent chamber permitted the telegraph companies operating on its said exchange floor to distribute both kinds of its price quotations without requiring them to obtain its approval in respect to the parties who sought them. On that date the chamber for the first time claimed that the quotations were its property and it then directed the telegraph companies to send out "continuous" quotations to such persons only as the said chamber thereafter approved.

PAR. 16. Beginning with July 21, 1914, the said chamber, by contract with the said telegraph companies, thereafter exercised control over all its price quotations, and by it claimed the right at any time to stop deliveries of all said price quotations, without any excuse therefor, by simply notifying "the telegraph companies to stop sending them to any particular person named." This contract also required the telegraph companies to submit to the chamber for its approval all applications of their subscribers for periodical quotations, and the chamber agreed therein to hold the telegraph companies

harmless from any damages arising from the refusal on the part of the telegraph companies to furnish them to an applicant.

PAR. 17. After said date both the Equity Cooperative Exchange and the St. Paul Grain Exchange made applications at different times to the said telegraph companies for service in respect to both kinds of said quotations. But the respondent chamber refused each time to permit the telegraph companies to furnish either the Equity Cooperative Exchange or the St. Paul Grain Exchange with such quotations. Both these exchanges were able, ready, and willing to pay for such quotations and to abide by and to agree to all of the rules and regulations required by the chamber of all applicants and subscribers for its said quotations, and nothing in the conduct of the business of either of them prevented them from obeying such regulations.

PAR. 18. These quotations were at all times and are now necessary to any one dealing in grain in car load lots. No grain in car load lots could at said times or can be sold intelligently without the knowledge of the said quotations.

PAR. 19. By means of boycott and threats of boycott the said chamber and the members thereof conspired and agreed among themselves and with others to induce its members and others to refuse to buy from, sell to, or otherwise deal with, the said Equity Cooperative Exchange, its stockholders, or the members of the St. Paul Grain Exchange. The said respondents for more than ten years last past have been engaged in a conspiracy and agreement among themselves and with others to annoy, embarrass and destroy the business of the said Equity Cooperative Exchange, its stockholders, and the St. Paul Grain Exchange and its members, with the purpose and the intent of the said Chamber, its officers and members, to secure and maintain for it and its members a monopoly of the grain trade at Minneapolis, Minnesota, and within a hundred miles thereof. That all these activities mentioned herein in these findings on the part of the said chamber, its officers and members, secured and retained for them a monopoly of the grain trade at Minneapolis and within a hundred miles thereof, and unduly hindered and restrained competition in interstate commerce between the members of the said chamber on the one hand and the said Equity Cooperative Exchange and its stockholders and the members of the St. Paul Grain Exchange on the other.

PAR. 20. The said Equity Cooperative Exchange at Minneapolis, from the time it commenced operating in 1907 until August 1, 1912, marketed its grain through a non-member of the said chamber, who, without objection, sold most of the said grain to members of the

said chamber. This amount of grain sold by the said Equity Cooperative Exchange through the said non-member until August 1, 1912, was small. On or about that date the said Equity Cooperative Exchange ceased to sell grain through the said non-member and established its own office in Minneapolis and attempted to operate an independent market wherein its members might purchase, sell, and handle grain in interstate commerce. Thereupon, in order to hinder, embarrass, and destroy the business of the said Equity Cooperative Exchange and that of its members as competitive grain dealers, the said Chamber of Commerce, its officers, directors, and members instituted said boycott and thereupon continuously refused to buy grain from the said Equity Cooperative Exchange.

PAR. 21. The said chamber and its members maintained said boycott, among other ways, by the adoption, enforcement, and interpretation of certain resolutions, which were printed by said chamber and sent to all its members in the form of Circular No. 405, passed October 8, 1912, and Circular No. 634, passed January 11, 1916.

Circular No. 405 falsely charged, among other things, that in many cases wherein non-members of the said chamber solicited shipments of grain and employed members of the said chamber to sell it, the shipments were obtained by the said non-members by various false statements, and closed with the following resolution:

Now, therefore, be it resolved, That members of the Chamber of Commerce are hereby forbidden to act in any manner as the agent or representative of any individuals, firms or corporations, in the cities of Minneapolis, St. Paul, or elsewhere, not members of the Chamber of Commerce, who are soliciting shipments of grain from the farmers or country shippers in the manner above mentioned, or through any scheme, artifice, or device, by which this Association is falsely represented, either in its dealings or in the right which the shippers get with respect thereto, or at all, unless the person so soliciting such shipment can show a written statement of the shipper to the effect that he realizes that the person receiving such shipment is not a member of the Chamber and can not get advantages out of the Chamber which he could not himself get.

The effect of this circular was to compel competitors of the members of the chamber to hold grain consigned to them until they received the written statement from the shipper required by the resolution above. This was intended to cause expense, delay and loss of the business, to said competitors.

PAR. 22. About January 11, 1916, and with the same purpose, intent, and effect, the said chamber and its members printed and published and sent to all its members broadcast a second resolution named by it, Circular No. 634. This circular falsely charged, among other things, the following: That there were persons in the grain trade (meaning the Equity Cooperative Exchange and its members,

and the members of the St. Paul Grain Exchange), who were still doing the things charged in said Circular No. 405; that some such persons were then using various schemes and pretenses to fraudulently conceal the fact that the farmers and other shippers pay more than reasonable amounts to market their grain through them, and that some of such parties induced some members of the said chamber to make purchases of that grain outside of the exchange room of the said chamber and sell it in the said exchange room at unreasonable gains to said members and caused the said shipper to pay from two to ten commissions, and closed with the following resolutions.

Now, therefore, be it resolved, That no member of this Association, either as owner or commission merchant or at all, shall hereafter sell any grain in the Exchange room of the Chamber of Commerce of Minneapolis, which such member knows or has reason to believe was originally consigned to any one either as commission merchant or otherwise, from either farmers or country shippers as the result of any of the fraudulent or wrongful practices or methods described in said Resolution of October 8, 1912, or herein.

Be it further resolved, That it is the opinion of the Board of Directors of this Association that the making of either profits or commissions which directly or indirectly result from deception practiced upon shippers in the marketing of their grain can not be too strongly condemned at all times by all people and in all places.

These circulars containing such rules and resolutions were interpreted by the chamber as forbidding its members to act in any manner for the Equity Cooperative Exchange and its stockholders; and the secretary for the chamber in writing to members of the chamber so interpreted them, and in order to enforce the observance of these rules and resolutions the chamber required and received from members of its disclosures of transactions had by them with the Equity Cooperative Exchange or its stockholders.

PAR. 23. The respondents, between May 1912 and May 1917, with the plan and purpose of injuring and destroying the business of the said Equity Cooperative Exchange and the said St. Paul Grain Exchange, published, in trade and daily newspapers, false and misleading statements concerning their financial responsibility and the methods used by them and their officers and members in transacting business in grain. Among these trade and daily newspapers were the "Cooperative Manager and Farmer," the "National Grain Grower and Equity Farm News," the "Fargo Forum," and the "Fargo Daily Courier News." These publications the respondents circulated and distributed to and among customers and prospective customers of the members of the said Exchanges. They likewise distributed the said articles in reprints, pamphlets and official correspondence, and through traveling grain solicitors in the employ of the respondent members of the said chamber. In these articles the respondents

vigorously attacked the said Equity Cooperative Exchange and the said St. Paul Grain Exchange, especially so in the "Cooperative Manager and Farmer"; they attacked editors who published comments and articles favorable to the said Equity Cooperative Exchange; they advised country elevator directors not to interfere with the managers of the said country elevators in the matter of choosing the persons and places to which their grain should be shipped; they pretended to offer expert advice on cooperative marketing of grain while at the same time they conducted a campaign against cooperative terminal marketing; and they attacked country elevators which shipped grain to the said Equity Cooperative Exchange.

PAR. 24. The said "National Grain Grower and Equity Farm News" prior to July 1913 was the "Official Organ" of the American Society of Equity, an association of farmers with which the Equity Cooperative Exchange during the first years of its existence was affiliated, and it supported the Equity Cooperative Exchange and advocated cooperative methods of doing business. In that month the said Chamber persuaded owners of the "National Grain Grower and Equity Farm News" to refuse to support any longer the said Equity Cooperative Exchange and its methods and to give it any more space therein. During the following year the said "National Grain Grower and Equity Farm News" published articles in condemnation of the said Equity Cooperative Exchange, and in praise of organized exchanges, particularly the said respondent Chamber, which during that time paid the "National Grain Grower and Equity Farm News" at least $2,500 for extra copies. In the same year many thousands of extra copies of the said "National Grain Grower and Equity Farm News," containing said articles defamatory of the said Equity Cooperative Exchange were circulated and paid for by the respondent Chamber while the issues of the said "National Grain Grower and Equity Farm News" still bore the legend "Official Organ" of the American Society of Equity, notwithstanding this paper had ceased to be such official organ after July 1913.

PAR. 25. Among the defamatory articles was one that appeared in the May 1912 issue of the said "Cooperative Manager and Farmer" and republished therein in 1914. This article falsely accused the Equity Cooperative Exchange of conducting a fraudulent transaction and of charging a shipper "double commission" on certain carloads of grain shipped to said Exchange by the "Farmers Elevator Company" of Glenburn, N. D. Upon investigation the Railroad and Warehouse Commission of Minnesota found, and stated that no fraud had been committed by the Equity Cooperative Exchange or its sales agent P. E. Cooper, in respect to such transaction. P. E. Cooper thereupon demanded retraction by the respondent Chamber,

but it again referred to this matter as a fraudulent transaction in an article entitled "History of Equity Cooperative Exchange," published in June 1914 issue of the "Cooperative Manager and Farmer." In 1917 the Chamber also printed and circulated it in a pamphlet entitled "Equity Cooperative Exchange Question Book." These articles aroused the Equity Cooperative Exchange to the adoption of a more aggressive attitude in carrying out the policy of cooperative marketing. Among other things it changed its management at Minneapolis. In June 1914 the "Cooperative Manager and Farmer" stated as follows:

This instance of the Glenburn Farmers Elevator Company in shipping to the Equity Cooperative Exchange was made public in May, 1912, issue of the Cooperative Manager and Farmer, and the publication of this fraud upon the Glenburn Farmers Elevator Company resulted in a very great uproar in Equity society circles. In order to satisfy the outcry which resulted, Mr. P. E. Cooper was made the "goat" and the Equity Cooperative Exchange proceeded, on August 1, 1912, to employ Mr. George F. Loftus, representing the Loftus-Hubbard Company as sales agent. (Com's Ex. 37, p. 30, 2nd Col., 2nd Par.)

PAR. 26. The said Chamber collected and furnished to the said "Cooperative Manager and Farmer" practically all of the copy and data used in the articles it published detrimental to the said Equity Cooperative Exchange.

PAR. 27. Upon the appointment of Loftus on August 1, 1912, as manager, the Equity Cooperative Exchange attempted to carry out the principles of cooperative marketing by opening at Minneapolis for the said Exchange a terminal market called the "Independent Grain Exchange." As soon as this was done the respondent Chamber established a system of espionage. The secretary of the Chamber, to-wit: respondent John G. McHugh, on August 10, 1912, wrote to respondent Timmerman, at that time president of the Commission Merchants Association, as follows:

Loftus is now agent for the Equity in place of Cooper * * * we believe it might be to interest of Commission Merchants' Association to keep an eye on operations of Farmers' Equity Union mentioned in their letter of the 17th.

With this letter he enclosed an advertisement of the Equity Cooperative Exchange. On August 23, 1912, the said respondent, John G. McHugh, sent a second letter to respondent Timmerman, enclosing a letter from the Gould Grain Company and also a letter from the travelling representative of the Gould Grain Company stating as follows:

Since Loftus has taken over the management of the Equity it is probable that their operations will be pushed most aggressively and we believe the commission merchants, thru their representatives, should keep our office closely advised regarding any information as to shipments to this Company—We be-

lieve the matter deserves the careful consideration of the Commission Merchants' Association.

PAR. 28. The respondent, John G. McHugh, as secretary for the said Chamber, wrote other letters which were intended to destroy, and which did injure the credit and standing of the Equity Cooperative Exchange with banks, farmers and customers and the public generally. The following letter dated August 17, 1904, and written by J. M. Withrow, an attorney for the respondent Chamber to P. L. Howe, at that time a member of the said Chamber is an example:

The information which I am receiving at present tends to show that the Farmers Elevators which have previously given them accommodation notes are becoming alarmed over them and the credits which they thus created, and I am of the opinion that if inquiries were made by a number of banks at the terminals of some of the local banks where these elevators were located asking whether the elevator companies were good for obligations for specific sums of from five thousand to ten thousand dollars that the officers of these banks would be very likely to let the information leak around as to inquiries being made, more particularly would that be true in cases where the local officers are Scandinavians, and they would undoubtedly begin to worry as to the reasons why such inquiries were being made and anxious to secure the return of their obligations. If the same thing were done with reference to the individuals who signed the fifty thousand dollar guarantee which Loftus is using as a basis of credit, I think you would find that these men would be anxious to get out from under.

My private advice is that that is the present condition with Mr. Leum of Maysville, who, I understand, has the best financial rating of anyone on that particular guarantee. My understanding is that his business competitors and associates have joshed him so much about it that he is very much worried over the matter and a few inquiries to his bank would, I think, tend to increase his anxiety. * * *

I am writing this matter very fully to you because I consider it advisable not to communicate with any other associative (sic) parties at present besides I know that you will understand how to handle the information. (Com's Ex. 145, p. 27.)

The suggestions made in the above letter were carried out with injurious effect as shown in the portion of the letter quoted on page 24[1] of these findings.

PAR. 29. Another course of espionage conducted by the respondents consisted of tracing shipments of individual cars of grain consigned to the Equity Cooperative Exchange. Based upon the data so secured the respondents then published articles containing false, unfair and misleading statements. Thus in one article respondents listed 428 such cars shipped to the said Exchange and purported to give the correct prices received by the shipper from the said Exchange. Concerning this list the respondents published in 1914, and republished in substance in 1917, the following statement:

[1] Page 150, as reported herein.

The Equity Cooperative Exchange then accounted to the shipper for these cars, as sold at the net price received by them, and then charged ANOTHER commission to the shipper * * *.

Whereas the fact was that on 381 of the said 428 cars the Equity Cooperative Exchange charged the shippers no commission at all, and furthermore the prices received by the shipper from the said Exchange for the sales enumerated therein were higher than the prices indicated by the respondents in the said list which accompanied and was a part of the said article.

Another article published during 1917 contains a list of cars sold in 1915 and was entitled "A List of Cars Showing Recent Sales Made at a Loss to Shippers." The sales so published were not recent nor were they made at a loss to shippers. The list is incomplete and purports to show the profit made by the resale of the cars, while the said list in fact neither exactly nor approximately represents the profit so made. The article takes no consideration of market changes during the time which elapsed between the purchase and sale of the cars. In some instances no consideration of the condition of the grain was made. In other instances prices purporting to have been received by the shipper were inaccurate, and in many instances, where the shipper received more than the grain actually brought at resale, such cars were published in a manner and in connection with statements which made it appear that the shipper lost money by not consigning such grain to respondent members when in fact the shipper received more than any price officially reported by respondent chamber for the same grade and quality of grain sold on respondent chamber on the day of such sale.

PAR. 30. Respondents, during the years 1914 to 1917, frequently published statements to the effect that grain consigned to the Equity Cooperative Exchange cost the shipper additional commissions for each cent of profit made on the resale of grain, and published at the same time and in connection therewith that any member of the Chamber of Commerce who would charge more than one commission would be expelled from membership while over 11% of the grain consigned to respondent members was resold by them, usually at a profit. Some of this grain was sold by the consignee, a member, to another member at ½¢ per bushel, and by that member to another, and by him still to another, each making a half cent per bushel thereon, and then repurchased by the consignee, who, after passing the title through others and back to himself bought it at a profit in some instances as high as 14¢ a bushel. Cars published by respondent as having been sold by the Equity below "Chamber of Commerce values" actually sold at prices higher than any officially published "Chamber of Commerce values" on the date of the sale.

Many other prices received for such cars were well within such reported values. In general the prices received by the Equity Cooperative Exchange for grain consigned to it were as high as those prices received for consigned grain by members of respondent Chamber. A publication known as the "Market Record," published at Minneapolis, was the official organ of the respondent Chamber for the purpose of publishing the prices at which various kinds of grain are sold on respondent Chamber's floor. Such prices were published daily and held out to the public as the prices at which grain in truth was actually sold. The fact is these prices so published were incomplete, in that all sales were not reported by respondent members, therefore the "Chamber of Commerce values" could not be mathematically determined.

PAR. 31. This same false, unfair and misleading matter was thereafter constantly used to the injury and disadvantage of the Equity Cooperative Exchange. Though campaign of defamation ceased officially in 1917, the matter so circulated during the preceding 5 years has been and is now used by farmers, bankers, country elevator officials and shippers to the financial injury of the Equity Cooperative Exchange.

PAR. 32. Respondents published in December, 1914, or within two or three months of the organization of the St. Paul Grain Exchange, an illustrated article derogatory to the St. Paul Grain Exchange and entitled:

EQUITY EXCHIANGE MOVES TO ST. PAUL.

The St. Paul-Department-Store-Mail Order-Grain-Exchange.

At page 51 this article states:

Department stores and barber supply houses and retail merchants of St. Paul are not justified in assisting in this deception by supporting a make-believe grain exchange such as the so-called St. Paul Grain Exchange, even though the activities of the St. Paul newspapers in supporting the St. Paul Grain Exchange does bring in a few farmers to St. Paul taking the business away from their local merchants; even this does not justify the wrong done and the deceptions practiced upon the farmers and farmers' elevator companies in the Northwest by the so-called Equity Cooperative Exchange.

Respondent published many other articles containing statements defamatory of the St. Paul Grain Exchange during the period 1914 to 1917.

PAR. 33. To eliminate the competition of those engaged in cooperative methods of marketing grain at Minneapolis and surrounding territory, the said respondents combined and conspired among themselves and with each other to destroy the said Equity Cooperative Exchange and to destroy the business of the St. Paul Grain Ex-

change and that of some of its members. As a part of their plan to carry out this purpose, the respondents persuaded Fred Schmidt, J. Emerson Greenfield and Samuel Crumpton, holders of one share each of the capital stock of the said Equity Cooperative Exchange, to bring in their own names as plaintiffs, against the president and secretary of the said Exchange, a proceeding by mandamus to obtain data from the books of the said Cooperative Exchange upon which to base another subsequent action to have the said Equity Cooperative Exchange, declared insolvent, adjudicated a bankrupt, to have a receiver appointed and its charter annulled.

PAR. 34. Accordingly and on or about July 24, 1914, and in the District Court of the Third Judicial District for the State of North Dakota, the three said stockholders, by an attorney named Edward Engerud, brought a proceeding by mandamus againt the President and the Secretary and Treasurer of the said Equity Cooperative Exchange to compel them, as such officers of the Exchange, and the said Exchange to permit an examination of the books of the said Equity Cooperative Exchange. After a hearing the said District Court granted the petition of mandamus commanding the Cooperative Exchange and its said President and Secretary and Treasurer to permit an examination of said books. On or about December 15, 1914, the Supreme Court of North Dakota affirmed the decision of the District Court and on February 2, 1915, denied a petition of the said Equity Cooperative Exchange for a rehearing. In consequence of this decision the respondents examined the books of the said Exchange. All of the costs and disbursements of these suits, including the fees of said Edward Engerud, attorney for the petitioners, plus the expense attendant upon the examination of the said books, were paid by the respondent Chamber.

PAR. 35. Based upon an examination of the said books, made under authority of said writ of mandamus, and upon about fifty affidavits made by as many members of respondent Chamber of Commerce and at the instance of said respondents, the State of North Dakota on the relation of Henry L. Linde, the Attorney General of said State, on or about April 23, 1915, brought suit to annul the charter of the said Equity Cooperative Exchange, to have it declared insolvent and a bankrupt, and to have a receiver appointed for it. The suit was tried by said Engerud, who was appointed a Deputy Attorney General to said Attorney General by the State of North Dakota, for the purpose of conducting this case. This proceeding seeking the appointment of a receiver and the annulment of the charter of the Equity Cooperative Exchange was dimissed by the court on the ground that the Exchange was not insolvent.

PAR. 36. Until the said date of the beginning of the proceeding by mandamus the said Greenfield and Crumpton, two of the three plaintiff's shareholders named above, were partners doing business as a commission house located at Superior, Wisconsin, and were acting there as sales agents for the said Equity Cooperative Exchange. On that date, however, and at the instance of the said Chamber of Commerce they brought in the United States District Court, for the Fourth Division, District of Minnesota, against said Exchange a suit for damages arising from an alleged breach of contract with said firm. This suit was conducted by an attorney named J. M. Witherow, whose services therein were paid by the said respondents. The action was dismissed by the court for lack of jurisdiction and nothing was ever further done to recover the amount claimed. The said suit was instituted and prosecuted by said respondents in bad faith with purpose, intent and effect of hindering and obstructing the business of the said Equity Cooperative Exchange, and of injuring its credit and reputation.

The said Witherow in reporting to P. L. Howe, a respondent member of said Chamber, on August 4, 1914, states:

> The publicity which we have been giving them in the newspapers has had a very unfavorable effect upon them and is making many of the farmers suspicious of their actions. When I am able to make public the affidavit which I yesterday secured from Mr. Smith of Voltaire and also the fact that they were securing accommodation notes from the farmers in large amounts which are being pledged to terminal banks, I think you will find the farmers will be very much more frightened.

PAR. 37. To further injure the credit and standing of the Equity Cooperative Exchange, the respondent Chamber caused inquiries and investigations to be made at banks and other financial backers of the said Exchange and stockholders therein in order to create in them a suspicion that all was not well financially with the said Exchange and its stockholders.

The following letter is illustrative of this practice:

THE CHAMBER OF COMMERCE OF MINNEAPOLIS.

SECRETARY'S OFFICE.

JULY 20, 1914.

MR. EDWARD ENGERUD,
Fargo, N. D.

DEAR SIR:

Your letter of recent date addressed to the Cooperative Managing Farmer, with reference to the results which developed from your partial examination of the books of the Equity Exchange at Fargo was presented to the undersigned this morning and read with much interest.

I enclose herewith a memorandum which explains itself. The data furnished in this memorandum was furnished in a very confidential manner and I desire it

to be so treated. An examination of the books and records of the Scandinavian-American National Bank, however, would disclose the situation to be as set forth in this memorandum. It occurred to me that if you were acquainted with the facts and knew where information was to be had and what that information would be, that it would be possible for you to secure it either by securing authority from the Equity Exchange to a chartered accountant to examine the records of the Scandinavian-American National Bank of Minneapolis or otherwise.

The names of the farmers' elevator companies whose notes are held by the bank as collateral and the amount of these notes would be very interesting and desirable but this information we were not able to secure at the time, although it is possible that this may be secured later. We consider this very important, as it is entirely possible that the amount of the notes of farmers' elevator companies put up as collateral by the Equity Cooperative Exchange might exceed many times the amount due the Equity Exchange from the farmers' elevator companies.

We felt that with this information in your hands you would be able to take such action as would secure its disclosure without causing the undersigned or his informant any embarrassment.

I believe that the Mr. J. C. Berg, of Hindrum, Minnesota, mentioned on the memorandum enclosed herewith is quite a friend of your partner, Mr. Frame.

Very truly yours,

(Signed) JOHN G. McHUGH, *Sec'y.*

Acting under this direction Attorney Engerud "without causing the undersigned or his informant embarrassment," secured by means of deposition much information "concerning farmers' elevator companies whose notes were held by the Scandinavian-American National Bank of Minneapolis" and other information of a confidential character.

PAR. 38. These actions cost the said Exchange for attorney's fees, witness fees, court costs, and other expenses, including loss of time of its officials and employees, not less than $20,000. They injured greatly its credit and standing with the public generally and with shippers of grain. In addition to the direct outlay necessitated by this litigation, the credit of the Equity Cooperative Exchange was seriously affected thereby and the confidence of the public generally, and the grain shippers in particular, was greatly weakened by the charges and allegations of unfair and dishonest conduct made and published by the plaintiffs in connection with the litigation and proceedings in question.

CONCLUSION.

That by reason of the facts set forth above, the respondents and all of them, have committed acts to the prejudice of the public and competitors of respondent Chamber and competitors of the members of respondent Chamber, and which acts constitute unfair methods of competition in commerce within the intent and meaning of Sec-

tion 5 of an Act of Congress, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the stipulations as to the facts entered into by counsel representing the Commission and counsel representing respondents, and the Commission having made its findings as to the facts with its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes";

Now, therefore, it is ordered, That the respondents: The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, and all other members, officers, directors, agents, servants and employees of the Chamber of Commerce of Minneapolis; Manager Publishing Company; John H. Adams, and John T. Flemming, and each of them and their or its officers, agents, solicitors, representatives, servants, and employees and all other persons acting under, through, by or in behalf of them or any of them, forever cease and desist:

From combining and conspiring among themselves or with others, directly or indirectly, to interfere with, or injure, or destroy the business or the reputation of the St. Paul Grain Exchange, or its officers and members, or the Equity Cooperative Exchange, or its officers and stockholders (or other competitors of the respondent Chamber and its members), by:

(1) Publishing or causing to be published in any newspaper, periodical, pamphlet or otherwise, or circulating, or causing to be circulated orally or otherwise, among the customers or prospective customers of the members of the St. Paul Grain Exchange, or the public generally, any false or misleading statements concerning the financial standing, the business or the business methods of the said Exchange, its officers or members, or concerning the said Equity Cooperative Exchange, its officers or stockholders.

(2) Instituting vexatious or unfounded suits either at law or in equity against said Equity Cooperative Exchange with the purpose or intent, or with the effect of hindering or obstructing the business of the said Equity Cooperative Exchange or injuring its credit and reputation.

It is further ordered, That the respondents: The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, and all other members, officers, directors, agents, servants, and employees of the Chamber of Commerce of Minneapolis, and each of them, and their or its officers, agents, solicitors, representatives, servants, and employees and all persons acting under, through, by or in behalf of it or them, or any of them, forever cease and desist from:

(1) Combining and conspiring among themselves or with others directly or indirectly to induce, persuade or compel and from inducing, persuading or compelling any of the members of said Chamber, their agents or employees, to refuse to buy from, sell to, or otherwise deal with the St. Paul Grain Exchange or its members or the Equity Cooperative Exchange, or its stockholders, or the customers of any of them, because of the patronage dividend plan of doing business adopted by the said Equity Cooperative Exchange, or by any of the members of the said St. Paul Grain Exchange, as more particularly set forth in paragraph 4 infra of this order.

(2) Hindering, obstructing or preventing any telegraph company or other distributing agent from furnishing continuous or periodical price quotations of grains to the St. Paul Grain Exchange, or its members, or to the Equity Cooperative Exchange or its stockholders.

(3) Passing or enforcing any rule or regulation, or enforcing any usage or custom, that prohibits or prevents members of the respondent chamber from conducting their business of dealing in grain according to the cooperative method of marketing grain or according to the patronage dividend plan, like or similar to the method or plan adopted by the Equity Cooperative Exchange.

(4) Denying to any duly accredited representatives of any organization or association of farmer grain growers or shippers admission to membership in said respondent chamber, with full and equal privileges enjoyed by any or all of its members or by any or all concerns represented by membership in said respondent Chamber of Commerce, because of the plan or purpose on the part of such organization or association to pay or purpose to pay patronage dividends or to operate or purpose to operate according to the cooperative plan of marketing grain, namely, the plan of returning any portion or all of its earnings or surplus to its patrons or members on the basis of patronage, whether such earnings or surplus is derived from charging patrons or members commissions or otherwise.

(5) Passing or enforcing any rule or regulation or enforcing any usage or custom, that compels shippers of grain to Minneapolis, Minnesota, from country points or from St. Paul, Minnesota, to pay commission or other charges, unless and until like commissions and charges are paid by shippers of grain to Minneapolis from Omaha, Nebraska, or from Kansas City, Missouri, or other such favored markets.

(6) Passing or enforcing any rule or regulation, or enforcing any usage or custom, that prohibits members of the respondent chamber, when buying grain on track at country points from paying therefor more than the market price of similar grain prevailing at that time in the Exchange Room of the respondent Chamber, less freight, commissions and other charges.

(7) Promulgating, interpreting or enforcing any rule, custom, regulation or usage in such a manner as to require any member of respondent Chamber to pay to the farmer, or country shipper or other person, a price for grain limited to a price equivalent to or identical with the Minneapolis market price, or otherwise limit the exercise of free will and individual independent judgment of any such member as to the price which he shall pay, or which he desires to pay farmers, country shippers, or others for grain on track at country points.

It is further ordered, That the respondents, The Chamber of Commerce of Minneapolis; C. A. Magnuson, C. M. Case, William Dalrymple, A. C. Andrews, B. F. Benson, W. T. Frasier, H. P. Gallaher, J. B. Gilfillan, Jr., H. S. Helm, Asher Howard, John McLeod, J. H. MacMillan, F. C. Van Dusen, John G. McHugh, Manager Publishing Company, John H. Adams, and John H. Fleming shall within sixty (60) days after the service upon them of a copy 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 heretofore set forth.

By order of the Commission: Commissioners Van Fleet and Gaskill dissenting.

FEDERAL TRADE COMMISSION

v.

PACIFIC STATES PAPER TRADE ASSOCIATION ET AL.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 934—December 31, 1923.

SYLLABUS.

Where a large majority of the jobbers and wholesalers in the Pacific Coast states, dealing in paper and paper products, selling 75 per cent of such products in the aforesaid states exclusive of roll newspaper, and in a number of instances with various branch houses, and with a community of interest through stock ownership in one another; their local associations, which admitted to membership as "legitimate dealers" only concerns employing traveling salesmen, and maintaining warehouse stocks from which deliveries were made, and which regarded distribution from manufacturer or other source of supply, to wholesaler or jobber, to retailer and others, as the "legitimate channels of distribution", and characterized all other distribution as illegitimate, and dealers not meeting the foregoing test as "illegitimate dealers"; and their general association;

(*a*) Sought by argument and persuasion, and by promises of increased purchases, to induce paper manufacturers to refuse to sell their products direct to the retail trade or to users of paper, or to or through brokers with the effect of suppressing competition in the sale thereof;

(*b*) Threatened to boycott and boycotted a manufacturer which had begun to sell its products direct to retailers and consumers and had fixed resale prices thereon lower than said jobbers' and dealers' prices therefor; and

Where one of said local associations and the members thereof,

(*c*) Included in its price lists as "suggested prices" prices for sales in states other than that in which said members were located, and respected a tacit and implied understanding that said prices would be observed, with the effect of restraining and lessening competition in the sale of such products in the aforesaid states; and

Where said local associations and their members,

(*d*) Included among the prices fixed and determined upon by each local association for local sales within the territory of the particular association, prices on "mill shipment", without distinguishing between factories located within the member's state and those located without such state, from which shipments were to move in response to the member's orders, with the effect of eliminating price competition in such sales; and

Where said jobbers and dealers,

(*e*) Used the price lists of the particular local association in the territory of which they were soliciting business, in quoting prices; and

(*f*) Used the price lists of their respective local associations when doing business without the state in which the members thereof had their place of business, but within territory recognized by the members as belonging to the particular association;

With the result that prices for the products concerned were fixed and uniform within each of said territories, and with the effect of limiting and lessening competition therein; and

Where members of three of said local associations,

(*g*) Agreed that a certain product should be sold at a uniform fixed price in a territory covering two states, with the result that it was impossible for purchasers to obtain such product at competitive prices within said territory; and

Where two of said jobbers or dealers in different states,

(*h*) Made an agreement by which one undertook in making sales within a third state, to respect the other's prices, with the result that price competition between the two was eliminated in said state; and

Where certain of said local associations composed of members located in two of the Pacific Coast states, meeting through their group organization; officers of the general association, covering the Pacific Coast and neighboring states; and the general sales manager of one of said jobbers or dealers, which was a concern with various branches in Pacific Coast states and cities, and with a preponderating position;

(*i*) Attempted through the medium of meetings and discussions of such matters as uniform discounts, sales of items at less than established prices under the term "close-outs," and establishment of a fixed charge for the cutting or trimming of paper, to determine or influence the prices of the products concerned within one of the aforesaid states, with the effect of preventing free and open competition therein in the sale of such products and of establishing common price policies by all of said members:

Held, That such practices, substantially as described, constituted unfair methods of competition.

Mr. R. J. Larson for the Commission.

McCutcheon, Olney, Mannon & Greene of San Francisco, Calif., for Pacific States Paper Trade Association, Paper Trade Conference of San Francisco, and B. N. Coffman, secretary of the Pacific States Paper Trade Association.

Mr. J. Y. C. Kellogg of Seattle, Wash., for Seattle-Tacoma Paper Trade Conference, Seattle Division of the Zellerbach Paper Co., American Paper Co., J. W. Fales Paper Co., Paper Warehouse Co., Inc., Seattle Paper Co., Standard Paper Co., Tacoma Paper & Stationery Co., and for himself individually and as Secretary of the Seattle-Tacoma Paper Trade Conference.

Hamblen & Gilbert of Spokane, Wash., for Spokane Paper Dealers, Spokane division of the Zellerbach Paper Co., John W. Graham & Co., B. G. Ewing Paper Co., American Type Founders Co., Spokane Paper & Stationery Co., and for W. S. Gilbert as Secretary of the Spokane Paper Dealers;

Mr. Chriss A. Bell of Portland, Oreg., for Portland Paper Trade Association, Portland division of the Zellerbach Paper Co., Blake-McFall Paper Co., J. W. P. McFall Paper Co., Endicott Paper Co.,

Crescent Paper Co., and for himself individually and as Secretary of the Portland Paper Trade Association.

Lawler & Degnan of Los Angeles, Calif., for Los Angeles Wholesale Paper Jobbers Association, J. R. Coffman as Secretary of the Los Angeles Wholesale Paper Jobbers Association, Blake, Moffitt & Towne, Pioneer Paper Co., R. L. Craig Co., Sierra Paper Co., and Standard Woodenware Co.

Bausman, Oldham, Bullitt & Eggerman of Seattle, Wash, for Mutual Paper Co.

Mr. John Francis Neylan of San Francisco, Calif., for Washington Pulp & Paper Corporation.

Mr. Nathan B. Williams of Washington, D. C., for American Type Founders Co.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Pacific States Paper Trade Association, its officers and members; Seattle-Tacoma Paper Trade Conference, its officers and members; Spokane Paper Dealers, its officers and members; Portland Paper Trade Association, its officers and members; Paper Trade Conference of San Francisco, its officers and members; Los Angeles Wholesale Paper Jobbers Association, its officers and members, including the various individuals, partnerships, and corporations named in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Seattle-Tacoma Paper Trade Conference, is a voluntary unincorporated association organized by and composed of individuals, partnerships, and corporations engaged in the business of selling paper and paper products at wholesale to wholesale and retail dealers in the State of Washington and in neighboring States and the Territory of Alaska. The object of said association is to promote the common interests of its members. Respondent, J. Y. C. Kellogg, is the secretary of said association, directing and administering its business and affairs. The following named respondents are members of said association:

American Paper Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Seattle, in said State;

J. W. Fales Paper Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Seattle, in said State;

Mutual Paper Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Seattle, in said State;

Washington Pulp & Paper Corporation, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Seattle, in said State;

Paper Warehouse Company, Inc., a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Seattle, in said State;

The Seattle Paper Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Seattle, in said State;

Standard Paper Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Tacoma, in said State;

Tacoma Paper & Stationery Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Tacoma, in said State;

Zellerbach Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State, and owning and operating branch places of business in the States of Washington, Oregon, and Utah, one of said branches being located in aforesaid city of Seattle and designated by said company as its Seattle Division.

Respondent, Spokane Paper Dealers, is a voluntary unincorporated association organized by and composed of individuals, partnerships, and corporations engaged in the business of selling paper and paper products at wholesale to wholesale and retail dealers in the State of Washington and in neighboring States. The object of said association is to promote the common interests of its members. Respondent, W. S. Gilbert, is the secretary of said association, directing and administering its business and affairs. The following named respondents are members of said association:

John W. Graham & Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Spokane, in said State;

Spokane Paper & Stationery Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Spokane, in said State;

B. G. Ewing Paper Company, a corporation organized under the laws of the State of Washington, with its principal office and place of business in the city of Spokane, in said State;

Zellerbach Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State, and owning and operating branch places of business in the States of Washington, Oregon, and Utah, one of said branches being located in aforesaid city of Spokane and designated by said company as its Spokane Division;

American Type Founders Company, a corporation with its principal office and place of business in the city of Spokane, in the State of Washington.

Respondent, Portland Paper Trade Association, is a voluntary unincorporated association organized by and composed of individuals, partnerships, and corporations engaged in the business of selling paper and paper products at wholesale to wholesale and retail dealers in the State of Oregon and in neighboring States. The object of said association is to promote the common interests of its members. Respondent, Chriss A. Bell, is the secretary of said association, directing and administering its business and affairs. The following named respondents are members of said association:

Rogers Paper Company, a corporation organized under the laws of the State of Oregon, with its principal office and place of business in the city of Salem, in said State;

Zellerbach Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State, and owning and operating branch places of business in the States of Washington, Oregon, and Utah, one of said branches being located in the city of Portland, Oreg., and designated by said company as its Portland Division;

Blake-McFall Paper Company, a corporation organized under the laws of the State of Oregon, with its principal office and place of business in the city or Portland, in said State;

J. W. P. McFall, an individual doing business under the trade name J. W. P. McFall Paper Company, with his principal office and place of business in the city of Portland, State of Oregon;

Endicott Paper Company, a corporation organized under the laws of the State of Oregon, with its principal office and place of business in the city of Portland, in said State;

R. L. Brackett and Chas. L. Frazier, partners doing business under the name and style Crescent Paper Company, with their principal office and place of business in the city of Portland, State of Oregon;

American Type Founders Company, a corporation with its principal office and place of business in the city of Spokane, in the State of Washington.

Respondent, Paper Trade Conference of San Francisco, is a voluntary unincorporated association organized by and composed of individuals, partnerships, and corporations engaged in the business of selling paper and paper products at wholesale to wholesale and retail dealers in the State of California and in neighboring States. The object of said association is to promote the common interests of its members. Respondent, B. N. Coffman, is the secretary of said association, directing and administering its business and affairs. The following named respondents are members of said association:

Blake, Moffitt & Towne, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State;

Bonestell & Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State;

The Pacific Coast Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State;

Zellerbach Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State, and owning and operating branch places of business in the States of Washington, Oregon and Utah;

Union Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Oakland, in said State;

San Jose Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Jose, in said State;

Richardson Case Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Sacramento, in said State;

Eastman Gibbons Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Sacramento, in said State;

Delmas Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Jose, in said State;

Respondent, Los Angeles Wholesale Paper Jobbers Association, is a voluntary unincorporated association organized by and composed of individuals, partnerships and corporations engaged in the business of selling paper and paper products at wholesale to wholesale and retail dealers in the State of California and in neighboring States. The object of said association is to promote the common interests of its members. Respondent, J. R. Coffman, is the secretary of said association, directing and administering its business and affairs. The following named respondents are members of said association:

Blake, Moffitt & Towne, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State, with a branch place of business in each of the cities of Los Angeles and San Diego in said State;

Zellerbach Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of San Francisco, in said State, and owning and operating branch places of business in the States of Washington, Oregon, and Utah, and a branch located in aforesaid city of Los Angeles and designated by said company as its Los Angeles Division;

Pioneer Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Los Angeles, in said State;

Standard Woodenware Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Los Angeles, in said State;

R. L. Craig Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Los Angeles, in said State;

Sierra Paper Company, a corporation organized under the laws of the State of California, with its principal office and place of business in the city of Los Angeles, in said State.

The foregoing respondent associations are hereinafter called the local associations. The membership of each local association habitually serves a loosely defined territory in which the bulk of such members' business is done and which is regarded by the members of the local associations in each instance as peculiarly within the sphere of their merchandising activities. Each local association recognizes the territories thus served as being peculiarly within the merchandising sphere of the membership of the local association in each instance, to the extent that each such association observes the merchandising rules and regulations established by the several local associations when soliciting business or making sales in the territory thus regarded as within the merchandising sphere of another association. The purpose of each local association is primarily to serve and promote the interests of its members with regard to their business within the territory which they particularly serve. Another purpose of each association is to promote the interests of its members outside such territory by co-operating with the other local associations in appropriate instances.

The respondent, Pacific States Paper Trade Association, is a voluntary unincorporated association organized by and composed of the individual members of the local associations. The object of the association is to promote the common interests of its members especially with respect to matters of common interest throughout the Pacific States. With the co-operation of the local association, it formulates such policies and takes or directs such actions as are calculated to carry into effect common policies for the entire Pacific Coast in those instances where the ends to be attained are not within the powers or purview of a local association. Respondent, B. N. Coffman, is the secretary of said association directing and administering its business and affairs.

The members of the several local associations in each instance comprise practically all the wholesale dealers in paper and paper products in the territory which its members particularly serve, and since the members of the local associations constitute the members of the Pacific States Paper Trade Association, the membership of the last named body embraces practically all the wholesale dealers in paper and paper products having their principal places of business in the States of Oregon, Washington, and California. The members of all the above named associations are hereinafter collectively

called the members. A large part of the paper requirements of the States of Idaho, Nevada, Montana, Arizona, New Mexico, and of the Territory of Alaska is also supplied by the members, who travel salesmen in said last named States, and, in some instances, maintain branch places of business therein. The acts and things done by respondents have substantially affected interstate commerce in the States of Idaho, Nevada, Montana, Arizona, New Mexico, and in the Territory of Alaska in like manner, although in less degree than, it has affected such commerce in the States of Oregon, Washington, and California, as hereinafter more particularly set out.

While the bulk of the business done by the members of the several local associations is done within the territory habitually served by the association in each instance, as above set out, the members of each local association, to some extent, solicit business and make sales outside such territory. The word territory as hereinafter used means territory served as above set out and defined.

The territory of the respondent, Seattle-Tacoma Paper Trade Conference, comprises roughly the northwest portion of the State of Washington and the Territory of Alaska.

The territory of the respondent, Spokane Paper Dealers, comprises roughly the eastern portion of the State of Washington, the northern portion of the State of Idaho, and the western portion of the State of Montana.

The territory of the respondent, Portland Paper Trades Association, comprises roughly the State of Oregon, the southern portion of the State of Washington and parts of Western Idaho.

The territory of the respondent, Paper Trade Conference of San Francisco, comprises roughly the southern portions of the State of Oregon, the northern half of the State of California and some portions of the States of Nevada, Utah, and Arizona.

The territory of the respondent, Los Angeles Wholesale Paper Jobbers Association, comprises roughly the southern half of the State of California and portions of the States of Nevada, Arizona and New Mexico.

The aggregate territory served by the members thus comprises the States of Oregon, Washington, Montana, Idaho, California, Nevada, Utah, Arizona, New Mexico, and the Territory of Alaska. Said aggregate territory is hereinafter referred to as the Pacific States. The members, upon making sales to purchasers located in States of the United States other than the State wherein is located, in each instance, the member's place of business, cause the commodities so sold to be transported from their respective places of business to said purchasers at points in such other States of the United States.

PAR. 2. By the common consent and agreement of the members, only dealers in paper or paper products who are dealers at wholesale only, who maintain a warehouse stock of the commodities in which they deal, from which they make delivery of the commodities sold by them, and who employ traveling salesmen through whom such sales are made, are entitled and admitted to membership in any foregoing association. A wholesale dealer thus qualified and defined is recognized by the members generally as having the right further to take orders for wholesale quantities of aforesaid merchandise to be filled by shipment to the purchaser directly from the manufacturer or other source of supply. Wholesalers, as above defined, are regarded by the members and are by them designated "legitimate wholesalers", and the distribution of paper and paper products from the manufacturers or other source of supply thereof, through such wholesalers to retail dealers and other large-quantity consumers, is regarded as being and is designated by the members the "legitimate" channel or channels of distribution. All other methods of wholesale distribution are regarded by the members as improper and illegitimate, and all dealers, brokers, agents, manufacturers dealing directly with the retail trade or the consumer, and other persons selling said products in wholesale quantities, who do not maintain warehouse stocks, travel salesmen or otherwise come within the definition of the so-called legitimate wholesalers, as above set out, are regarded and designated by the members as "illegitimate" dealers.

PAR. 3. For about three years last past, the Pacific States Paper Trade Association, the local associations and the members, with the common purpose of restricting the wholesale distribution of paper and paper products throughout the Pacific States to the so-called "legitimate" channels and of preventing such distribution by any other method or means or through any other agency than themselves, and with the further common purpose of suppressing competition in, and controlling and enhancing wholesale prices of, said products in the Pacific States to their own collective benefit, cooperating together have done and now do the following acts and things:

(*a*) The members refuse to sell to, or in any way supply so-called illegitimate dealers with paper and paper products;

(*b*) The members report to their respective local associations and to the Pacific States Paper Trade Association the names of all so-called illegitimate dealers in the Pacific States who come to their notice, and attempt to, and do, coerce manufacturers and other sources of supply into refusing to further supply said dealers with paper and paper products; and in instances where

such offending dealer is a manufacturer desiring to sell directly to the retail trade or consumer, attempt to, and do coerce such manufacturer into abandoning such intended business;

Said coercion is accomplished by the members acting individually, and collectively through respondent associations, to bring to bear threats of boycott and other species of intimidation against said manufacturers and other sources of supply;

(*c*) To the end that the members be continuously advised of the progress of the coercive measures set out in the preceding specification, and to the end that uniform action may be had, action taken by the members individually and by the local associations is notified to the Pacific States Paper Trade Association, and vice versa, and the Pacific States Paper Trade Association informs the local associations and the members of such action as has been taken and takes such action itself and recommends and directs such further action by the members and the local associations as it deems best calculated to carry said coercive measures to a successful conclusion;

(*d*) The members of each local association agree upon and establish schedules of uniform minimum prices at which the commodities dealt in by them are to be sold by them in the territory of such association. The prices thus established are enhanced beyond the prices which would prevail under natural and normal competition in said industry in the absence of said price agreement;

(*e*) The adherence of members of the local associations to the schedules described in the preceding specification is assured and the maintenance of the prices therein fixed is secured by a system of fines provided for by the local association to be, and which are, exacted from any member making a sale or sales of said commodities at prices less than those set out in said schedules. The prices thus fixed, established and enforced are hereafter called schedule prices;

(*f*) That there may be a substantial uniformity in schedule prices throughout the Pacific States, providing for aforesaid enhancement of prices, the associations exchange said price lists with each other and supply the same to the Pacific States Paper Trade Association, to the end that by comparison and adjustment substantial differences in prices for like goods may be, and they are, eradicated by causing such prices as are below the general level of said enhancement and the average of said aggregate schedule prices, to be adequately raised;

(*g*) By common consent and agreement the members of each local association, when soliciting business or making sales in the territory of another local association, observe and abide by the schedule prices in effect in the territory where the sale is made and neither offer nor sell paper or paper products in such territory at prices less than said schedule prices;

(*h*) To the end that aforesaid uniform enhancement may be maintained and price competition eliminated throughout the Pacific States, the members notify their local associations and the Pacific States Paper Trade Association of infractions of the agreement set out in the foregoing specification, and these various associations bring pressure to bear upon the offending member to cease such practice. They, and each of them, are empowered to, and do levy fines against such offending members and are empowered to declare, and do declare, such territory to be "open"; that is to say, that the members of the various associations may, and they do, until recision of said last named action, disregard the schedule of prices in effect in said territory and sell their commodities therein at such prices as they see fit to demand.

The result and effect of the foregoing practices has been and now is substantially to lessen and restrict competition in the sale of paper and paper products in the Pacific States; to prevent brokers, agents, and manufacturers selling direct to the retail trade or consumer and other persons not members of the local associations from selling paper and paper products at wholesale in the Pacific States; to enhance the wholesale prices of said commodities above the prices which would prevail therefor under normal, natural and open competition, and to hinder the natural flow of commerce in said commodities in the channels of interstate trade.

PAR. 4. The above alleged acts and things done by respondents and by each of them, have a dangerous tendency unduly to hinder competition and to create a monopoly of the wholesale paper trade in the Pacific States in the hands of respondents and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Pacific States Paper Trade Asso-

ciation and others, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance and filed their answers herein admitting that certain of the matters and things alleged in said complaint were in the matter and form therein set forth, and having filed herein a stipulation as to the facts, in which it is stipulated and agreed by the respondents that the Federal Trade Commission may take such stipulation as to the facts as the facts in this proceeding, and in lieu of testimony, and proceed forthwith to make its report stating its findings as to the facts, and an order disposing of the proceeding without the introduction of testimony and the matter having been further presented upon oral argument, the Federal Trade Commission, being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Seattle-Tacoma Paper Trade Conference, is a voluntary, unincorporated association organized by and composed of individuals and corporations engaged as jobbers and wholesalers of paper or paper products, and having their places of business in the cities of Seattle and Tacoma, and engaged in selling paper or paper products in the State of Washington, and as to some of them in the Territory of Alaska. Respondent J. Y. C. Kellogg is secretary of said association and under the direction of its members administers its affairs.

The following named respondents are, or during the year last past were, members of this association:

American Paper Company, a Washington corporation;
J. W. Fales Paper Company, a Washington corporation;
Paper Warehouse Company, a Washington corporation;
Standard Paper Company, a Washington corporation;
Seattle Paper Company, a Washington corporation;
Tacoma Paper & Stationery Company, a Washington corporation;
Zellerbach Paper Company (Seattle Division), a California corporation;
Mutual Paper Company, a Washington corporation. (This company withdrew from membership on or about April 12, 1922.)

PAR. 2. The respondent, Spokane Paper Dealers, is a voluntary unincorporated association organized by and composed of indi-

viduals and corporations engaged as jobbers and wholesalers of paper or paper products and having their places of business in the city of Spokane and engaged in selling paper or paper products in the State of Washington and in neighboring States. Respondent W. S. Gilbert is secretary of said association and under the direction of its members administers its affairs. The following named respondents are, or during the year last past were, members of this association:

John W. Graham & Company, a Washington corporation;
Spokane Paper & Stationery Company, a Washington corporation;
B. G. Ewing Paper Company, a Washington corporation;
Zellerbach Paper Company (Spokane Division), a California corporation;
The American Type Founders Company (Spokane Branch), a New Jersey Corporation. (This company sold its paper department and withdrew from membership in May, 1922.)

PAR. 3. The respondent, Portland Paper Trade Association, is a voluntary, unincorporated association, organized by and composed of individuals, partnerships and corporations engaged as jobbers and wholesalers of paper and paper products, and having their places of business in the city of Portland and neighboring cities, and engaged in selling paper or paper products in the State of Oregon and in neighboring States. Respondent Chriss A. Bell is secretary of said Association and under the direction of its members administers its affairs. The following named respondents are, or during the year last past were, members of this association:

Rodgers Paper Company, an Oregon corporation;
Blake-McFall Company, an Oregon corporation;
J. W. P. McFall, an individual;
Endicott Paper Company, an Oregon corporation;
R. L. Brackett and Charles L. Frazier, partners doing business under the name and style of Crescent Paper Company;
Zellerbach Paper Company (Portland Division), a California corporation;
American Type Founders Company (Portland Branch), a New Jersey corporation. (This company sold its paper department and withdrew from membership in May, 1922.)

PAR. 4. The respondent, Paper Trade Conference of San Francisco, is a voluntary, unincorporated association organized by and composed of individuals and corporations engaged as jobbers and wholesalers of paper or paper products, and having their places of business in the city of San Francisco and in neighboring cities, and

engaged in selling paper or paper products in the State of California and in neighboring States. Respondent B. N. Coffman is secretary of said association and under the direction of its members administers its affairs. The following named respondents are, or during the year last past were, members of this association:

Blake, Moffitt & Towne, a California corporation;
Bonestell & Company, a California corporation;
Pacific Coast Paper Company, a California corporation;
Zellerbach Paper Company, a California corporation;
Union Paper Company, a California corporation;
San Jose Paper Company, a California corporation;
Richardson Case Paper Company, a California corporation;
Eastman-Gibbens Paper Company, a California corporation;
Delmas Paper Company, a California corporation.

PAR. 5. The respondent, Los Angeles Wholesale Paper Jobbers' Association, is a voluntary, unincorporated association organized by and composed of individuals, partnerships, and corporations engaged as jobbers and wholesalers of paper and paper products, and having their places of business in Los Angeles or San Diego, and engaged in selling paper or paper products in the State of California and in neighboring States. Respondent J. R. Coffman is secretary of said association and under the direction of its members administers its affairs. The following named respondents are, or during the year last past were, members of this association:

Blake, Moffitt & Towne (Los Angeles Division), a California corporation;
Zellerbach Paper Company (Los Angeles Division), a California corporation;
Pioneer Paper Company, a California corporation;
Standard Woodenware Company, a California corporation;
R. L. Craig Company, a California corporation;
Sierra Paper Company, a California corporation.

PAR. 6. The respondent, Pacific States Paper Trade Association, is a voluntary unincorporated association organized by and composed of individuals, partnerships and corporations engaged as jobbers and wholesalers of paper or paper products and having their respective places of business in the various jobbing centers in the States of California, Oregon, Washington, and neighboring States. Respondent B. N. Coffman is secretary of said association and under the direction of its membership administers its affairs. The following named respondents are, or during the year last past were, members of this association:

American Paper Company, Seattle;
Seattle Paper Company, Seattle;

Tacoma Paper & Stationery Company, Tacoma;
Zellerbach Paper Company (Seattle Division), Seattle;
Mutual Paper Company, Seattle;
Paper Warehouse Company, Seattle (This company resigned from this association January 15, 1923);
John W. Graham & Company, Spokane;
Spokane Paper & Stationery Company, Spokane;
B. G. Ewing Paper Company, Spokane;
American Type Founders Company (Spokane Branch), Spokane (This company sold its paper department and withdrew from membership in May, 1922);
Zellerbach Paper Company (Spokane Division), Spokane;
Rodgers Paper Company, Salem, Oregon;
Zellerbach Paper Company (Portland Division), Portland;
Blake-McFall Company, Portland;
J. W. P. McFall, Portland;
Endicott Paper Company, Portland;
American Type Founders Company (Portland Branch), Portland. (This company sold its paper department and withdrew from membership in May, 1922);
Blake, Moffitt & Towne, San Francisco;
Bonestell & Company, San Francisco;
Pacific Coast Paper Company, San Francisco;
Zellerbach Paper Company, San Francisco;
Union Paper Company, Oakland;
San Jose Paper Company, San Jose;
Richardson Case Paper Company, Sacramento;
Eastman-Gibbens Paper Company, Stockton;
Delmas Paper Company, San Jose;
Blake, Moffitt & Towne (Los Angeles Branch), Los Angeles;
Zellerbach Paper Company (Los Angeles Division), Los Angeles;
Pioneer Paper Company, Los Angeles;
Standard Woodenware Company, Los Angeles;
Sierra Paper Company, Los Angeles.

PAR. 7. The above-described respondent associations, with the exception of the Pacific States Paper Trade Association, are frequently called and hereinafter designated as "local associations." Joint meetings of the members of two or more of said local associations are held from time to time. Minutes of such meetings are kept under a designated name for each group. These groups are as follows:

(*a*) California Paper Trade Association. This is a group composed of members of the San Francisco and Los Angeles local associations and meets from time to time for the discussion of matters of mutual interest and for the adoption of measures pertaining to both associations. It has no organization and no officers. Its minutes have been distributed among its members.

(*b*) Northwest Paper Dealers. This represents a group of members of the Portland, Seattle-Tacoma, and Spokane local associations and meets once or twice annually. It has no formal organization, the presiding officer for each meeting being designated at the time of meeting. Its minutes are distributed to the membership of the three associations.

(*c*) San Diego Wholesale Paper Dealers. This is an informal organization of the wholesale paper dealers at San Diego, California. Its members are Zellerbach Paper Company (San Diego Division), Blake, Moffitt & Towne (San Diego Division), and Pioneer Paper Company (San Diego Branch). Buel-Towne Company of San Diego formerly was a member of the Los Angeles local association but ceased to be a member or or about July 1, 1921. The San Diego association was formerly affiliated with the Los Angeles Wholesale Paper Jobbers Association and had as its secretary, J. R. Coffman, secretary of the Los Angeles local association, but this affiliation was discontinued on or about July 1, 1921.

PAR. 8. The Pacific States Paper Trade Association is a member of the National Paper Trade Association, whose principal office is in New York City.

PAR. 9. Many of the individuals, partnerships, and corporations, members of respondent associations, are engaged in the sale of paper and paper products in interstate commerce. The activities of the respondent associations and of individual members thereof have affected interstate commerce to the extent and in the manner hereinafter set forth in the states of Idaho, Nevada, Montana, Arizona, New Mexico, Oregon, Washington, California, and other States of the United States, and the Territory of Alaska.

PAR. 10. It is admitted by the answers of respondent associations that only wholesalers and jobbers of paper or paper products who maintain warehouse stocks of the commodities in which they deal, from which they make deliveries of the commodities sold by them, and who employ traveling salesmen, are entitled to and admitted to membership in respondent associations. Wholesalers and jobbers thus qualified are recognized as having the right to take orders for wholesale quantities of paper or paper products to be filled by

shipment direct from the manufacturer or other sources of supply. Likewise, with the exception of the Los Angeles Wholesale Paper Jobbers, the answers of respondents admit that wholesalers and jobbers as above defined are regarded by respondents and by them designated as "legitimate dealers," and the distribution of paper and paper products from the manufacturer or other sources of supply through such wholesalers and jobbers to retail dealers and others is regarded by respondents and by them designated as "legitimate channels of distribution"; that distribution of paper and paper products through other means is considered illegitimate, and dealers, other than those above defined, are regarded by respondents, and by them designated, as "illegitimate dealers."

PAR. 11. A large majority of the jobbers and wholesalers within the States of California, Oregon, and Washington who deal primarily or exclusively in paper and paper products are members of one of respondent local associations and of respondent Pacific States Paper Trade Association. A substantial proportion of the paper or paper products used or consumed in the Pacific Coast States does not pass through the hands of jobbers or wholesalers in paper or paper products. Respondent members of respondent associations sell approximately 75 per cent of the paper and paper products used and consumed in the Pacific Coast States, exclusive of roll newspaper, the tonnage of which is large and which is for the most part sold direct by the mills to the user.

PAR. 12. The members of each local association habitually serve a loosely defined territory in which the bulk of their business is done, and which is regarded by them as peculiarly within the sphere of their merchandising activities; such territory is that which is naturally tributary to the jobbing center where the members of such local association are located and within which jobbing or wholesale dealers located in such centers have an advantage over similar dealers located elsewhere in competition with them by reason of such factors as lower freight rates, nearness in distance, and accustomed trade channels. These territories are as follows:

Seattle-Tacoma Paper Trade Conference, the northwest portion of the State of Washington and the Territory of Alaska;

Spokane Paper Dealers, eastern portion of the State of Washington, the Northern portion of the State of Idaho, and the western portion of the State of Montana;

Portland Paper Trade Association, the State of Oregon, the southern portion of the State of Washington, and parts of western and southern Idaho;

Paper Trade Conference of San Francisco, parts of the southern portion of the State of Oregon, the northern part of the State of California, and portions of the State of Nevada;

Los Angeles-Wholesale Paper Jobbers' Association, the southern half of the State of California, and portions of the States of Nevada and Arizona.

PAR. 13. The Seattle-Tacoma Paper Trade Conference and the Spokane Paper Dealers have an agreement as to the division of territory within the State of Washington between such associations and their respective members.

PAR. 14. The Paper Trade Conference of San Francisco and the Los Angeles Wholesale Paper Jobbers' Association have an agreement as to the division of territory within the State of California between such associations and their respective members.

PAR. 15. The Zellerbach Paper Company, with its principal office in San Francisco, maintains branches at Los Angeles, San Diego. Fresno, Oakland, San Francisco, and Sacramento in the State of California; Portland in the State of Oregon; Seattle and Spokane in the State of Washington; and Salt Lake City in the State of Utah. This company has an agency contract for the sale of its paper products with Snyder & Crecelius of Walla Walla, Washington.

PAR. 16. Blake, Moffitt & Towne, with its principal office in the city of San Francisco, operates branch houses at Los Angeles and San Diego, California. It owns $57\frac{3}{10}$ per cent of the capital stock of Blake-McFall Company of Portland, Oregon. The Blake-McFall Company owns $77\frac{9}{10}$ per cent of the capital stock of the American Paper Company of Seattle, Washington. The American Paper Company owns $66\frac{4}{10}$ per cent of the capital stock of the Tacoma Paper & Stationery Company of Tacoma, Washington.

PAR. 17. The Butler Paper Corporation with its principal office in the city of Chicago, Illinois, owns approximately 75 per cent of the issued stock of the Pacific Coast Paper Company of San Francisco, California. The Pacific Coast Paper Company owns a branch at Fresno, California, and owns $13\frac{1}{3}$ per cent of the stock of the Endicott Paper Company, Portland, Oregon, $13\frac{4}{100}$ per cent of the stock of the Mutual Paper Company, Seattle, Washington, and 10 per cent of the stock of the Sierra Paper Company, Los Angeles, California.

PAR. 18. These companies enumerated in paragraphs 15, 16 and 17, together occupy a preponderant position in the business of wholesaling paper and paper products in the Pacific Coast States.

PAR. 19. There is a fixed division of territory within the State of Washington between the Zellerbach Paper Company at Portland and its branch house at Seattle; between the Blake-McFall Company at Portland and the American Paper Company at Seattle, and the Tacoma Stationery & Paper Company at Tacoma; and between the Endicott Paper Company at Portland and the Mutual Paper Company at Seattle; and a fixed division of territory in the State of Washington between the branch house of the Zellerbach Paper Company at Seattle and its branch house at Spokane; and a fixed division of territory within the southern portion of the State of Washington between the branch house of the Zellerbach Paper Company at Portland and its branch house at Spokane, and Snyder & Crecelius of Walla Walla, Washington, a company having an agency contract with the said Zellerbach Paper Company; and a fixed division of territory in the southern portion of the State of Oregon between the Zellerbach Paper Company at San Francisco and Sacramento and its branch house in Portland; between Blake, Moffitt & Towne of San Francisco and Blake-McFall Company of Portland; and between the Pacific Coast Paper Company of San Francisco and the Endicott Paper Company of Portland. These divisions in general conform to divisions in territory naturally served from different jobbing centers by reason of such factors as freight rates, distance, and accustomed trade channels. As a part of this division of territory it is understood that if one party to such a division makes sales in the territory of the other party to the division, the former shall follow the selling price of the latter.

PAR. 20. Each of the respondent local associations are, and for more than a year last past have been engaged in the following specified activities:

(*a*) The Seattle-Tacoma Wholesale Paper Trade Conference publishes and distributes to its membership uniform price lists to be observed by the members in the sale of wholesale paper and paper products in the portion of the State of Washington within Seattle territory as hereinbefore described. These price lists are compiled by price list committees of the association or are agreed upon at meetings of the association. Price changes made from time to time therein are printed and distributed by the secretary. The members of the association file with the secretary complaints against other members for sales made within the State of Washington, either below the prices given in the price lists or otherwise in infraction of agreed sales regulations. The secretary has authority to examine the books of any member complained against and otherwise investi-

gate the complaint and had authority to levy a fine against the member for such sales made below the established prices, or in infraction otherwise of the agreed sales regulations. Fines for such infractions have been levied against some of the members by the secretary and the fines paid.

(*b*) The Spokane Paper Dealers fix prices to be observed by their members on sales by them within the State of Washington. These prices are published in the form of price lists and these lists, together with changes that occur from time to time, are published by the association and distributed through the secretary's office to the membership. The members file with the secretary complaints against other members for sales made within the State of Washington, either below the prices given in the price lists or otherwise in infraction of agreed sales regulations. The secretary has authority to examine the books of any member complained against and otherwise investigate the complaint and to levy a fine against the member for such sales made either below the established prices or in infraction otherwise of the agreed sales regulations. Fines for such infractions have been levied against some of the members by the secretary and the fines paid.

(*c*) The Spokane Paper Dealers in its price lists printed as "suggested prices" prices for sales to purchasers within the State of Idaho and the western portion of Montana, and there was a tacit or implied understanding between the members of such association that the prices so suggested for said last named states would be observed in making sales within said states, and such prices were in general so observed. There was no rule or regulation of the association which would make the nonobservance of such prices an infraction of the rules of the association or subject the member who did not observe such prices to any penalty.

The use of "suggested prices" as herein described and the understanding in reference to such prices, restrains and lessens competition in interstate sales of paper and paper products in said States of Idaho and Montana.

(*d*) The Portland Paper Trade Association publishes a price list to be observed by its members in the sale of their products within the State of Oregon. This list is agreed upon at meetings of the association. The supervision of printing and distribution of price lists is assumed by one of the prominent members of the association, but notices of price changes are mailed by the secretary to the members. Sales within the State of Oregon at prices less than those fixed by the association or in violation of other selling regulations of the association are deemed infractions of the rules of the association. Infractions of the rules are brought to the attention of the secretary,

who has authority to make necessary investigations and where it is determined that a member has violated a rule the matter is brought to the attention of the association at one of its meetings, and the member required to make an explanation.

(*e*) The Paper Trade Conference of San Francisco has adopted and published a price list to be observed by its members in making sales of their products within the State of California. The prices are fixed through the medium of price list committees, or agreed upon at meetings of the association. The lists, as well as changes made from time to time, are published and distributed to the members by the secretary of the association. Complaints are made to the association secretary against individual members for sales within the State of California, either at prices below those so fixed by the association or otherwise in violation of selling regulations of the association. The secretary has authority to inspect the books of the member complained of and to make other investigations to determine whether the complaint is well founded and whether an infraction of the rules has occurred.

(*f*) Los Angeles Wholesale Paper Jobbers Association has adopted and published uniform price lists to be observed by its members in making sales within the State of California. These prices are fixed through the medium of a price list committee or determined at meetings of the association. The price lists, as well as changes made therein from time to time, are compiled and distributed by the secretary of the association to the members. Complaints are filed with the secretary when any member makes a sale within the State of California at less than the agreed or fixed prices, or otherwise violates the selling regulations as to such a sale. In such case the secretary is authorized to inspect the books of the member complained against and make any additional investigation necessary. Where an infraction of the regulations is discovered the secretary has authority to levy a fine against such member for such violation. Such fines have been levied by the association secretary at various times, and the fines paid.

(*g*) Each of the local associations has a rule that sales of specific items, such as broken lots of stock, slow-moving stock, or stock for which there is little demand, may be made by a member at less than the list price. These are called "close-outs." Permission to make such sales must always be obtained from the local association of the member making such sale and other members are notified of the price at which these items are to be sold by such member. Other members are authorized to purchase the close-out stock at a discount from the fixed close-out price.

(*h*) Most, if not all, of the local associations have a rule which provides that no member shall at any time insert advertisements in any newspaper or other publication except where the advertisement is inserted by the association on behalf of all of its members.

(*i*) Among the prices so fixed as above by each local association for sales within the State wherein is located the jobbing center from which such association takes its name are prices on what are known as "mill shipments." By "mill shipments" are meant sales upon orders not requiring immediate delivery, and which are capable of being filled by shipment from the place of manufacture. Mill shipments are of two sorts, those in railroad carload lots, and those in less than such carload lots. Such shipments in less than carload lots are combined in actual shipment from the mill with other paper or paper products so as to make up a carload, which carload is shipped by the mill to the jobber or wholesaler as a single consignment. Upon arrival of such a shipment at the point of destination, delivery from the car is taken by the jobber or wholesaler, who in turn delivers to the purchaser the portion of the consignment intended for him. Mill shipments in carload lots are made upon bills of lading or shipping papers specifying as the point of destination the place where delivery is to be made to the purchaser from the jobber or wholesaler. In some instances, the jobber or wholesaler is named in the bill of lading or shipping papers as the consignee to whose order delivery is to be made by the carrier. In other cases, the purchaser is named in the bill of lading or shipping papers as such consignee. In those cases where the jobber or wholesaler is so named as the consignee, such jobber or wholesaler, upon arrival of the shipment at the point of destination, either itself takes delivery from the carrier and in turn delivers to the purchaser or endorses and delivers the bill of lading or shipping papers to the purchaser, who then takes delivery direct from the carrier. In those cases where the purchaser is named in the bill of lading or shipping papers as the consignee, such purchaser takes delivery direct from the carrier upon arrival of the consignment at the place of destination. In all cases of mill shipments, the jobber or wholesaler orders the subject of sale from the mill and pays for the same and there is no relation between the mill and such purchaser. Mill shipments as above described, and prices on which are fixed by the local associations for sales by their members to purchasers within the State where their members are located, include both shipments from mills located within such State and shipments from mills located without such State.

It follows from the foregoing facts that mill shipments in all of the ways specified above, where the goods are shipped from a mill in one State to or for a purchaser in another State, are shipments of goods injected into the channels of interstate commerce and continued in interstate commerce until delivery to the purchaser, and the inclusion of fixed and uniform prices for such sales in the published price lists of the various local associations eliminates price competion in the purchase and sale of such products in interstate commerce.

PAR. 21. Agreements confined to the state of Washington are entered into between the Seattle-Tacoma Paper Trade Conference and the Spokane Paper Dealers in regard to prices, the division of territory, distribution of price lists and catalogs in each other's territory, the observance of each other's price lists, the definition of who are and what constitutes country jobbers, uniform vacation dates for salesmen, and equalization of freight charges to specific points.

PAR. 22. Agreements confined to the State of California are made between the Paper Trade Conference of San Francisco and the Los Angeles Wholesale Paper Jobbers' Association as follows: Division of territory, prices to be quoted in each other's territory, uniform prices for both territories, and uniform vacation dates for salesmen.

PAR. 23. The Paper Trade Conference of San Francisco cooperates with envelope manufacturers, stationers, and box manufacturers, and in some instances exchanges price lists with them and in some instances agrees on prices with them in regard to sales within the State of California. Meetings are held from time to time with merchants of one or more classes for the above objects.

PAR. 24. The Association of Wholesale Paper Dealers at San Diego uses the price lists and selling regulations of the Los Angeles Wholesale Paper Jobbers' Association.

PAR. 25. The Los Angeles Wholesale Paper Jobbers' Association together with the Paper Trade Conference of San Francisco conferred with, and for a time agreed with, certain wholesale grocers in California as to the maintenance in a certain county of the State of California of the prices fixed by the Los Angeles association.

PAR. 26. The price lists of each local association are used by such of its members as do business without the state wherein the jobbers or wholesalers comprising the association are located in quoting prices and making sales without such state and such price lists are habitually carried and used by the salesmen of such members when traveling without such state for the purpose of securing business. No association has any rule or requirement that such price lists be observed or followed in quoting prices or making sales without

such state, and, except as herein specifically set forth, the quoting of lower or different prices or the making of sales thereat is not deemed an infraction of rules or trade regulations by reason of which any other jobber or wholesaler may complain. The foregoing does not apply to Alaska. No salesmen for members of the Seattle-Tacoma Association travel in Alaska and the price lists of such association are not habitually carried into such territory.

Within the portions of the territories of the respective local associations which are without the State wherein the jobbers or wholesalers comprising the association are located, with the exception of Alaska, the habitual carrying of a particular association price list by the salesmen of such jobbers, members of such association as do business within such territory, and the use of such price list by such member jobbers in quoting prices and making sales within such territories, have a natural tendency to and do limit and lessen competition therein, and the result of such practice is fixed and uniform prices for such products within each of such territories.

PAR. 27. In certain instances agreements or understandings are had as to prices at which paper or paper products are sold for delivery from one state to a purchaser in another state, to wit:

(*a*) Agreements that a certain kind of paper for a particular use shall be sold at a uniform fixed price in a territory extending over two states were made between such of the members as dealt in such paper of three local associations within whose territory as herein defined such states fall.

This agreement or understanding made it impossible for purchasers to obtain this particular paper at competitive prices within the territory covered by the agreement.

(*b*) One of the respondent jobbers located in one state has agreed with another respondent jobber located in another state that the latter in making sales within a certain state, wherein neither of said jobbers was located, would observe the prices at which the first was selling.

As between these two jobbers within the State covered by the agreement price competition was eliminated.

PAR. 28. Meetings of the so-called Northwest Paper Dealers hereinbefore mentioned were attended and participated in from time to time by the president and secretary of the Pacific States Paper Trade Association. The following subjects were discussed at meetings of this association: Uniform Discounts, The Establishment of Resale Prices by Manufacturers, The Guaranteeing of Prices against Decline for Specified Periods, The Question of making Sales for Certain Items at less than Established Prices under the Term of

"Close-Outs," and the advertising by Members in Newspapers or other Periodicals. At these meetings prices to be observed by members of the Seattle-Tacoma Association and the Spokane Association within the State of Washington were discussed. At a meeting of the said so-called Northwest Paper Dealers a resolution fixing a uniform price to be charged by the members of the three local associations making up such meeting for "cutting" was adopted. "Cutting" is the cutting or trimming of paper to particular dimensions and is done when an order is received for paper of other than standard dimensions. The price fixed as aforesaid for cutting was $3 per hour. The chairman of the committee upon whose report such resolution was adopted was the general sales manager of the Zellerbach Paper Company with his headquarters in San Francisco.

From the foregoing facts the discussion of prices for the State of Washington through the medium of these meetings, in which the members of the Portland Paper Trade Association, officers of the Pacific States Paper Trade Association and the general sales manager of the Zellerbach Paper Company of San Francisco participated with members of the Washington State local associations, the Seattle-Tacoma Paper Trade Conference and the Spokane Paper Dealers, in the light of the agreements and understandings, as hereinbefore described, was an attempt on the part of jobbers and representatives of jobbers without the state of Washington to determine or influence the prices of paper and paper products within the state of Washington and affected interstate commerce by an effort to determine or influence prices for interstate sales of such products. The discussion of such items as "Uniform Discounts," and "The Question of Making Sales for Certain Items at Less Than Established Prices under the Term of 'Close Outs,'" and the establishment of a fixed charge for the cutting or trimming of paper to be observed by the members of the three local associations named, when participated in by members of the Seattle-Tacoma Paper Trade Conference, the Spokane Paper Dealers, the Portland Paper Trade Association, officers of the Pacific Paper Trade Association and the general sales manager of the Zellerbach Paper Company, of San Francisco, in the light of the activities of the local associations named and the preponderating position occupied by this last-named company, had a natural tendency to prevent and did prevent free and open competition in the sale of paper and paper products in interstate commerce and establish common price policies by all of said members.

PAR. 29. The respondent members of the respondent associations have strongly opposed and objected to competition in the form of sales by paper manufacturers direct to the retail trade, and to large

users of paper, and by paper brokers who negotiate or make sales for direct shipment from the mills to the purchaser. The respondent jobbers and wholesalers, both individually and through the respondent, Pacific States Paper Trade Association, and the respondent local associations, acting through their officers and committees, and on behalf of their members, have sought by argument and persuasion, and also by promises to increase their purchases from the manufacturers, and also by argument and persuasion and such promises combined, to induce paper manufacturers to refuse to sell their products direct to the retail trade or to users of paper or to or through brokers. Such efforts have been directed both to inducing the manufacturers not to extend their practice of making sales of the above character and to inducing them to cease selling in the above-described ways to those to whom they were already selling and accustomed to sell.

It follows from the above facts that the efforts of the respondents to prevent manufacturers of paper and paper products from selling direct to the retail trade and to large users of paper, and to prevent paper brokers from making sales of paper, in the manner above specified, and the characterization, by certain of said local associations, of some avenues of distribution as illegitimate and the designation of certain jobbers or dealers as "illegitimate dealers" as specified in paragraph 10 hereof, is designed to limit the number of jobbers of paper and paper products doing business within the territory in which these respondents do business, and is designed to prevent manufacturers of such products from making sales except to certain designated jobbers, all of which tends to and does suppress competition in the sale of such products in interstate commerce and to subject such commodities to the unlawful price fixing activities of the respondents.

PAR. 30. In 1920 the American Writing Paper Company, a manufacturer of fine paper with mills in the eastern part of the United States, demanded that the paper jobbers or wholesalers of the Pacific Coast States take from it annually a certain large tonnage of fine paper, and fixed the resale prices at which its products should be sold by the jobber or wholesaler, the prices so fixed being lower than the prices fixed in the manner hereinbefore set forth by the San Francisco local association for the same or similar articles. This demand was refused and thereupon the American Writing Paper Company shipped to the city of San Francisco a large stock of paper manufactured by it and proceeded to sell the same direct to the retail trade and to users of paper, and also fixed the prices at which such paper should be resold by jobbers or wholesalers pur-

chasing the same. Thereupon such of the respondents as deal in fine paper, with certain exceptions, did protest, both individually and collectively, and through the respondent associations, against the American Writing Paper Company's maintaining a large stock on the Pacific Coast and selling direct therefrom to the retail trade and to users of paper, and fixing the resale price thereof for jobbers and wholesalers, and did threaten it that they would cease to purchase from it unless it discontinued such action and upon its failure to discontinue such action did in fact cease for the most part, to purchase from it. Subsequently an understanding was reached between the American Writing Paper Company and representatives of the Pacific States Paper Trade Association that the American Writing Paper Company would discontinue the practices objected to by respondents.

It follows from the above facts that such conduct on the part of respondents constituted a combined effort to coerce and control the marketing policy of the American Writing Paper Company in interstate commerce.

CONCLUSION.

That under the conditions and circumstances set out in the foregoing findings of fact—

1. The purposes, practices, and policies of the Spokane Paper Dealers and its members, as found in paragraph 20, subparagraph (c) of aforesaid findings of fact, constitute an unlawful agreement to fix and maintain prices of paper and paper products in interstate commerce.

2. The purposes, practices, and policies of all of the respondent local associations and their members as found in paragraph 20, subparagraph (i) of aforesaid findings of fact, constitute unlawful agreements to fix and maintain prices of paper and paper products in interstate commerce.

3. The practices and policies of various members of the Spokane Paper Dealers, Portland Paper Trade Association, Paper Trade Conference of San Francisco, and Los Angeles Wholesale Paper Jobbers Association, as found in paragraph 26 of aforesaid findings of fact, have a natural tendency to and do unlawfully fix prices and suppress competition in the sale of paper and paper products in interstate commerce.

4. The agreement entered into by certain respondents as found in paragraph 27, subparagraph (a) of aforesaid findings of fact, constitutes an illegal agreement to suppress competition in interstate commerce.

5. The agreement entered into by certain respondents as found in paragraph 27, subparagraph (b) of aforesaid findings of fact, constitutes an illegal agreement to suppress competition in interstate commerce.

6. The purposes, practices and policies of members of the Seattle-Tacoma Paper Trade Conference, Spokane Paper Dealers, Portland Paper Trade Association, and officers of the Pacific States Paper Trade Association, and Zellerbach Paper Company, as found in paragraph 28 of aforesaid findings of fact, constitute an unlawful interference with free competition in the sale of paper and paper products in interstate commerce.

7. The practices, policies, and purposes of respondents as found in paragraph 29 and paragraph 10 of aforesaid findings of fact, constitute an unlawful interference with the sale of paper and paper products in interstate commerce.

8. The purposes, practices, and policies of respondents as found in paragraph 30 of aforesaid findings of fact, constitute an illegal interference with and control of the movement and sale by the American Writing Paper Company of paper and paper products in interstate commerce.

9. That all of the actions, agreements, understandings, policies and practices of the respondents as set out in these findings constitute unfair methods of competition in interstate commerce and are in violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto, a stipulation as to the facts filed herein, and upon oral argument, and the Commission having made its report in which it stated its findings as to the facts and its conclusion thereon,

It is now ordered, That—

(*a*) The Spokane Paper Dealers, its officers and members, forever cease and desist from entering into or acting under any agreement or understanding, express or implied, among each other or with other jobbers or dealers, which fixes or is intended to fix the prices to be charged for paper or paper products in interstate commerce, or from using any joint or uniform price list or other device which fixes prices for paper or paper products sold or to be sold in interstate commerce.

(*b*) The Spokane Paper Dealers, Portland Paper Trade Association, Paper Trade Conference of San Francisco, Los Angeles Whole-

sale Paper Jobbers Association, and their officers and members, or any of them, forever cease and desist from using, directly or indirectly, either separately or in combination, in the making or soliciting of sales in interstate commerce, the price list of any local association, or any price list the prices wherein have been fixed by agreement or understanding between two or more of respondent jobbers or wholesalers, or from compiling, publishing and distributing any joint or uniform list or compilation of prices for use or used or intended to be used in making sales of paper products in interstate commerce.

(*c*) Each and all of the respondent local associations, their officers and members, forever cease and desist from entering into or acting under any agreement or understanding, express or implied, among each other or others, which fixes the prices for sales designated and described in the findings herein as "mill shipments" in carload quantities or less than carload quantities, where the article sold by respondent jobber or wholesaler is one supplied by the manufacturer from a point without the state wherein such jobber or wholesaler is located, or from compiling, publishing, and distributing any joint or uniform list or compilation of prices for use or intended to be used in making such sales.

(*d*) Each and all of the members of the respondent local associations, whether acting independently or through the medium of such local association or associations, forever cease and desist from entering into any agreement or understanding with each other or with others to fix prices for any particular article or kind of paper or to fix prices for any particular state or territory, where the prices so fixed are designed for use and are used in quoting prices or making sales in interstate commerce.

(*e*) The Seattle-Tacoma Paper Trade Conference, Spokane Paper Dealers, Portland Paper Trade Association, their officers and members, the Pacific States Paper Trade Association and its officers, forever cease and desist, through the medium of meetings of the so-called Northwest Paper Dealers, or in any similar manner, from discussing uniform terms, discounts and prices, agreeing upon prices by resolution or otherwise, or employing any similar device, which fixes or tends to fix the prices at which paper or paper products shall be sold in interstate commerce, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of such respondent jobbers in the sale of paper or paper products in interstate commerce.

(*f*) The Pacific States Paper Trade Association, its officers and members, and the various respondent local associations, their officers

and members, forever cease and desist from conspiring or combining between or among themselves or any of them, to hinder or prevent, by intimidation, coercion, withdrawal or threatened withdrawal of patronage, or any other similar means, the American Writing Paper Company, or any other manufacturer of paper and paper products, from making sales of paper or paper products at any price or upon any terms or condition such manufacturer may elect, to any wholesaler, jobber, dealer or consumer, whether or not considered by said respondents as entitled to such purchases.

(*g*) All of respondent associations and their officers and members forever cease and desist from conspiring, combining, or agreeing among themselves, or with each other or others, or through respondent associations, or any other organization or association, or in any way whatsoever, to hinder or prevent any wholesaler, jobber, dealer, or consumer from purchasing paper or paper products in interstate commerce directly from the manufacturer or wholesaler thereof or from anyone else selling or desiring to sell such products.

(*h*) All of respondent associations and their officers and members forever cease and desist from any attempt or effort through such associations or by concert of two or more of their members, or through any other organization or association, to hinder or prevent, by intimidation, coercion, withdrawal or threatened withdrawal of patronage or custom, either express or implied, or promises or agreements to increase such patronage or custom, any person, firm, partnership, or corporation, or any agent or representative thereof, from buying and selling paper or paper products in interstate commerce, from or to whomsoever, or at whatsoever price or terms may be agreed upon between the seller and the purchaser; or by combination or agreement, express or implied, to communicate directly or indirectly with any manufacturer, wholesaler, or retail dealer, or any agent or representative thereof, for the purpose of inducing, coercing, or compelling such manufacturer, wholesaler, or retail dealer, not to sell paper or paper products in interstate commerce to any person, firm, partnership, or corporation whether or not recognized or classified by respondents as a legitimate dealer or otherwise entitled to such purchases.

It is further ordered, That these respondents shall within sixty (60) days from the notice hereof file with the Commission a report in writing, stating in detail the manner in which this order has been complied with and conformed to.

Commissioners Thompson and Gaskill were not sitting during the oral argument and took no part in the consideration and decision of this case.

ORDER DISMISSING COMPLAINT AS TO WASHINGTON PULP & PAPER CORPORATION.

Respondent, Washington Pulp & Paper Corporation, having filed its motion to dismiss complaint herein as to it, and the matter having been brought to the attention of the Commission and having been fully considered, now therefore

It is ordered, That the complaint herein as to the said respondent, Washington Pulp & Paper Corporation, be, and the same is hereby, dismissed for the reason that said company is not a wholesaler of paper or paper products, is not and never was a member of any of respondent associations, and is not engaged in the practices set out in the complaint.

ORDER DISMISSING COMPLAINT AS TO AMERICAN TYPE FOUNDERS COMPANY.

Respondent, American Type Founders Company, having filed its motion to dismiss complaint herein as to it, and the motion having been duly considered by the Commission,

Now, therefore, it is ordered, That the complaint herein as to the said respondent, American Type Founders Company, be, and the same is hereby, dismissed.

FEDERAL TRADE COMMISSION

v.

THE BARRETT COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 485—January 10, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a prepared roofing resembling rubber in appearance and made in varying thicknesses, but containing no rubber and consisting of only one-ply or layer; respectively designated, labeled, advertised and sold the same as "rubber" roofing and as one-ply, two-ply and three-ply, as the case might be, in competition with concerns which refrained from, or had discontinued, so designating and marketing similar products and in competition with concerns engaged in the manufacture and sale of other kinds of roofing, not misleadingly described in reference to composition and manufacture; with the effect of deceiving and misleading a substantial part of the general purchasing public and trade in reference to the composition and manufacture of such roofing and into believing that in purchasing the aforesaid roofing it was in fact purchasing a product composed wholly or partly of rubber and consisting of two or three plies, layers or thicknesses, respectively:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

Miller & Otis of New York City (*Clark McKercher* and *H. Bartow Farr*, both of New York City, of counsel), for respondent.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Barrett Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Barrett Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State

of New Jersey, having its principal office and place of business in the City of New York, in the State of New York, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer of ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, The Barrett Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney and filed its answer herein, hearings were had, and evidence was thereupon introduced in support of the allegations of said complaint

and on behalf of the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, The Barrett Company, is now, and for many years last past has been, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office in the City of New York, State of New York, numerous branch offices in cities throughout the United States, and manufacturing establishments in several of said States. During all of the times herein mentioned respondent has been engaged in the manufacture and sale of numerous commodities made from coal tar and asphalt, such as paving material, wood preservatives, roofing material, and prepared roofing. Respondent, in connection with its sales causes its commodities to be transported from its manufacturing plants, through and into various other States of the United States and the District of Columbia, to purchasers located in the said States and District of Columbia There are and have been for many years numerous other persons, firms, and corporations engaged in the manufacture and in the sale of similar prepared roofing, and still others engaged in the manufacture and in the sale of other kinds of roofing, who likewise cause their roofing to be transported from the State where manufactured, through and into said States of the United States and District of Columbia, to purchasers therein located; and respondent is in active and direct competition, in interstate commerce, with such persons, firms and corporations.

PAR. 2. The prepared roofing so manufactured by respondent consists of various types. Some of these, which are surfaced with ground slate or other mineral, have a rough surface. Another type which will hereinafter be referred to as smooth-surface roofing, has a smooth surface. In manufacturing its smooth surface roofing, respondent takes a sheet of the desired thickness and length of rag felt and passes it through a saturating tank or bath where it absorbs asphaltic base oils, after which it is coated on both sides with a high-melting-point asphalt. Before shipping or causing such smooth surface roofing to be transported, as above described, respondent puts it up in rolls containing approximately 108 square feet; nails and cement for use in laying such roofing are placed in the center of each

roll; each roll is wrapped in a paper cover, and two labels, one larger than the other, are attached to such paper cover.

PAR. 3. For a number of years prior to the issuance of the complaint herein, respondent extensively advertised its roofing by samples enclosed in cardboard covers and by pamphlets, circulars and other printed matter, which it distributed direct to ultimate consumers upon request and to its various customers, who, in turn, displayed and distributed such printed matter to ultimate consumers. Respondent also extensively advertised such roofing in magazines and farm papers having a national circulation.

PAR. 4. Practically all of the various types of pamphlets, circulars, and other printed matter distributed by respondent designated its smooth surface roofing as: Everlastic "Rubber" Roofing, and by the use of the term "ply" in some cases designating it as: 1 ply, 2 ply and 3 ply, and in others as: Light (1-ply) 35 pounds, Medium (2-ply) 45 pounds, and Heavy (3-ply) 55 pounds per roll; and practically all of the advertisements placed by respondent in magazines and farm papers designated its smooth surface roofing as: Everlastic "Rubber" Roofing, and for a time such advertisements also designated it as: one, two and three ply. A number of the cardboard sample covers distributed by respondent designated its smooth surface roofing as: Everlastic "Rubber" Roofing, and the others designated it as: 1 ply, 2 ply, and 3 ply.

PAR. 5. For a number of years prior to the issuance of the complaint herein, the larger of the two labels attached by respondent to its smooth surface roofing in some cases designated its roofing as "Rubber Roofing," and in other cases as "Everlastic Roofing," and in still other cases by the use of fanciful names such as "Mexoid Roofing"; the smaller of the two labels attached by respondent to its smooth surface roofing in some cases designated it as "1 ply," "2 ply," and "3 ply," and in other cases as "(1 ply) Light Weight," "(2 ply) Medium Weight," and "(3 ply) Heavy Weight"; and such roofing was offered, exposed for sale, and sold by respondent to roofing contractors and wholesalers and retailers of roofing and was offered, exposed for sale to the general public, and sold to ultimate consumers by such retailers and roofing contractors, as "Rubber" Roofing and "1 ply," "2 ply," and "3 ply" roofing, with said labels so applied by respondent still attached thereto.

PAR. 6. The roofing so sold, labeled, advertised, and marketed by respondent does not consist of more than one ply or layer, and does not contain any rubber in its composition, though it does resemble rubber in appearance and is made in thicknesses which vary according to weight.

PAR. 7. The wrappers or paper covers enclosing the respondent's smooth surface roofing and the labels, sample covers, pamphlets, circulars, magazine, and farm paper advertisements, and other printed matter used in connection therewith, with the exception of one type of pamphlet, were not marked or labeled or branded with any word or words to indicate the fact that such roofing did not contain rubber; and respondent did not indicate through any of these media the nature or character of the water-proofing materials used to saturate, coat and surface its smooth surface so-called Everlastic "Rubber" Roofing, or that such roofing was not constructed of more than one layer or piece of felt.

PAR. 8. The word "rubber" when used as a noun means primarily and popularly caoutchouc or India-rubber or something made partly or wholly of caoutchouc or India-rubber, and when used as an adjective means made of caoutchouc or India-rubber or having caoutchouc as the principal component. The word "ply" when used as a noun means primarily and popularly a layer or thickness; and when used as an adjective means the number of thickness of which anything is made.

PAR. 9. A substantial part of the consuming public and some retailers of roofing and roofing contractors understand the word "rubber" when applied to prepared roofing of the kind described in paragraph 2 hereof and the words "1 ply," "2 ply," and "3 ply" when applied to said roofings and to tar and gravel, or built up roofings to mean that such roofing is composed partly of rubber and consists of one, two, and three plies, layers or thicknesses, respectively.

PAR. 10. For a period of several years preceding December, 1919, a number of respondent's competitors for a time also labeled and advertised their smooth surface roofing as "Rubber Roofing" and "1 ply," "2 ply," and "3 ply," and, believing that these terms when so used were misnomers and misleading, abandoned and discontinued such use thereof. Other competitors of respondent refrained from using these terms and marketed their smooth surface roofing under labels and by means of advertisements which describe in whole or in part the composition of such roofing or refer to it by some nondescriptive words, fanciful trade names or brands, or when designating the weight or thickness thereof use the words "light," "medium," and "heavy," and in some cases also state the number of pounds which such roofing weighs. Some of the said competitors of respondent on numerous occasions printed and distributed the statement that there was no rubber in so-called rubber roofing and that it consisted of only one layer.

PAR. 11. Other types of roofing, such as wooden shingles, asphalt-saturated shingles, tarred roofing, galvanized iron roofing, copper roofing, slate roofing, and tile roofing, are marketed by some of respondent's said competitors, and by still other competitors of respondent under labels and by means of advertisements which describe in whole or in part the materials of which such roofing is composed. Some of respondent's said competitors market roofings which are called asbestos, tar and tarred felt and gravel roofings, and which are constructed of separate layers or plies, under labels and by means of advertisements which describe such roofing as "1 ply," "2 ply," "3 ply," "4 ply," and "5 ply."

PAR. 12. It was the sense of the prepared roofing manufacturing industry as expressed by a resolution adopted in March, 1919, by the Prepared Roofing Association, an organization comprising among its members at the time of the adoption of said resolution, the respondent and thirty-one of the approximate total number, ranging from thirty-five to forty-five manufacturers of prepared roofing in the United States, that the trade should be educated "to use the terms 'light,' 'medium,' and 'heavy' in place of '1 ply,' '2 ply,' and '3 ply,' and that, as expressed by another resolution adopted by the Association in March, 1920, "rubber deteriorates on exposure to the weather, as is known to everyone, and to represent that the roofing contained rubber would not only be untrue but would also injure the reputation of the roofing." It was also the sense of the industry, as expressed in March, 1920, by said last mentioned resolution, that the use of the terms "1 ply," "2 ply," and "3 ply" had "been gradually given up, so that they are today obsolete," and, as expressed at the same time by the Secretary of said Association, that the use of the term "Rubber" had been "abandoned." It was the sense of a number of roofing manufacturers, retail roofing dealers and roofing contractors that the terms "1 ply," "2 ply," and "3 ply" and "Rubber" misled and deceived a substantial portion of the public into believing that there was some rubber in the roofing and that it was constructed of more than one layer.

PAR. 13. A substantial number of consumers have a preference for roll roofing which is described as "Rubber," "1 ply," "2 ply," and "3 ply," because they believe that such roofing has rubber in it and is constructed of more than one layer or ply; and a substantial number of said consumers purchased this type of roofing, which contained no rubber and consisted of only one ply or layer, under such erroneous belief.

PAR. 14. Respondent's designation and description of its smooth surface roofing as "Rubber Roofing," and "2 ply" and "3 ply," in such labels and advertisements, is a false and misleading description and designation of the roofing so labeled and advertised; does create, and is calculated and has the capacity and tendency to create a false impression and belief among a substantial part of the roofing trade and general public, that the roofing so labeled and advertised, and other roofing of the same type, is composed wholly or partly of rubber and consists of two and three plies, layers or thicknesses, respectively, and to deceive and mislead a substantial part of the general purchasing public and roofing trade into the belief that in purchasing such roofing it is in fact purchasing roofing which is composed wholly or partly of rubber and consists of two and three plies, layers or thicknesses, respectively.

CONCLUSION.

The practices of respondent, The Barrett Company, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitue a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, The Barrett Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product: (*a*) in circulars, booklets or other advertising matter; or (*b*) as, or in connection with, or as part of, a trade name or brand for such roofing; or (*c*) on labels, covers or wrappers for, or on rolls of, such roofing; and

[1] Made as of June 16, 1924.

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the words or terms "two-ply" or "three-ply" alone or in combination with any other word or words to describe its product; (*a*) in circulars, booklets or other advertising matter; or (*b*) as, or in connection with, or as part of, a trade name or brand for such roofing; or (*c*) on labels, covers or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with.

FEDERAL TRADE COMMISSION

v.

WESTERN WOOLEN MILLS COMPANY, INCORPORATED.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 978—January 10, 1924.

SYLLABUS.

Where a corporation engaged in the sale direct to consumers of knit underwear, sweaters, hosiery, shirts, blankets and other similar merchandise, and neither owning, controlling, nor operating any machinery, mill or factory,

(*a*) Used as a corporate name a name which included the word "mills," and featured the same upon its billheads, letterheads, labels, shipping tags and other stationery;

(*b*) Used order blanks containing the words "I hereby request you to make to order the following goods and ship to me";

With the effect of misleading the trade and public into believing it to be the owner or operator of a mill or factory making the articles sold by it;

Held, That such misleading use of corporate name, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. H. L. Mulliner of Salt Lake City, Utah, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Western Woolen Mills Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is now and has been for over one year last past a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its principal place of business at Salt Lake City in said State, and since its incorporation has been and now is engaged in the business of selling direct to customers located in Utah, Nebraska, and Montana and various other States of the United States, knit socks, stockings, sweaters, under-

wear, and woven coats, shirts, and blankets and other similar merchandise, and in shipping or causing to be shipped said merchandise when sold from the State of Utah to their said customers at various points in other States of the United States. In the course and conduct of its said business, respondent is and has been during all the times mentioned in this complaint, in competition with others similarly engaged.

PAR. 2. Respondent, in the course and conduct of its said business, uses its corporate name "Western Woolen Mills Co." and has prominently displayed and does now prominently display said name in its newspaper advertisements, letterheads, order blanks, package labels and other stationery and literature, and has solicited and now solicits its business through its agents who travel throughout various States of the United States other than Utah and solicit and obtain, direct from the user and consumer of articles sold by respondent, orders for said articles, and orders on blanks printed and furnished by respondent by which respondent is required "to make" the articles required. Respondent also, through its said agents, has represented and does represent, orally, to its prospective customers that it is the manufacturer of the articles offered for sale.

PAR. 3. The respondent has, at no time during its existence, owned, controlled, or operated, and does not now own, control, or operate any woolen mill or other factory, and did not and does not now manufacture any of the articles sold or offered for sale by it, but has filled and now fills the orders received by it from its customers, from merchandise purchased by it from the stocks of manufacturers and others.

PAR. 4. The use by the respondent of the corporate name "Western Woolen Mills Co." in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive the public into the mistaken belief that the respondent owns or operates woolen mills or mills in which are manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying direct from the manufacturer and are thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Western Woolen Mills Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing and counsel for the Commission having submitted a brief, and the respondent having notified the Commission of its intention not to file any brief, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Western Woolen Mills Company is now, and has been since March 8, 1922, a corporation duly organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Salt Lake City, in said State, and since its incorporation has been and is now engaged in the business of selling direct to customers located in Utah, Idaho, Montana, and various other States of the United States, knit underwear, sweaters, hosiery, shirts, blankets, and other similar merchandise, and in shipping or causing to be shipped said merchandise, when sold, from the State of Utah to its said customers at various points in other States of the United States. In the course and conduct of its said business, respondent is engaged in competition with others similarly engaged.

PAR. 2. Respondent in the course and conduct of its said business used and displayed its corporate name "Western Woolen Mills Company" upon its billheads, letterheads, labels, shipping tags, and other stationery, and has solicited its business through agents who travel throughout the various States of the United States other than Utah, and solicit and obtain direct from the user and consumer of articles sold by respondent, orders for said articles. These orders are taken on order blanks printed and furnished by respondent and signed by customers and prospective customers, on which are printed the words "On or about ———, 19—, I hereby request you to make

to order the following goods and ship to me." All orders are taken in the name and for the account of the respondent, Western Woolen Mills Company. Respondent does not know whether its salesmen represent to the customers that the articles which they sell are made by respondent, but the salesmen are instructed not to make any misrepresentations regarding the articles.

PAR. 3. It is only occasionally that respondent has to have made to order any of the goods which it sells. In the filling of the orders for articles taken by the salesmen from customers and prospective customers respondent did not manufacture itself, or on machinery owned, controlled, or operated by itself, the garment or article so ordered, but had the same made by some mill, or mills, either located in Provo, Utah, or at Salt Lake City, Utah. In cases where it is necessary, the measurements of the customer are taken and the mills above-mentioned manufacture the articles to conform to such measurements.

PAR. 4. The respondent has at no time during its existence owned, controlled, or operated, and does not now own, control, or operate any machinery, mill or factory, and does not now manufacture any of the articles sold or offered for sale by it.

PAR. 5. The use by respondent of the name "Western Woolen Mills Company," as set forth in the complaint herein, and the use on its order blanks of the words, "I hereby request you to make to order the following goods and ship them to me," or any other words, phrases, or sentences in which statements are made to the effect that respondent is the manufacturer of the goods or articles sold by it, creates the impression in the minds of the trade and public that the company is engaged in the business of manufacturing certain of the articles which it sells, and leads the public to believe that said respondent does actually own or operate a mill or factory in which articles sold by it are manufactured.

PAR. 6. On April 9, 1923, subsequent to the issuance of the complaint herein by the Federal Trade Commission, respondent, by an amendment to its articles of incorporation, changed its corporate name to "Western Woolen & Knit Goods Company," and it is now conducting its business in the name of the Western Woolen & Knit Goods Company.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a

violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent and a stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now, therefore, it is ordered, That the respondent, Western Woolen Mills Company, Inc., its successors, officers, directors, agents, servants, and employees cease and desist from:

(1) Doing business under the corporate name and style of Western Woolen Mills Company, or any other corporate name which includes the word "mills" unless and until such respondent actually owns or operates a mill or mills in which it manufactures the woolen articles which it sells.

(2) Using any words, phrases, or sentences on the order blanks, letterheads, or any other literature distributed by it in the course of its business, which indicate or create the impression that said respondent is a manufacturer of the articles which it sells, unless and until such respondent does actually manufacture said articles.

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

Commissioner Murdock dissents.

FEDERAL TRADE COMMISSION

v.

E. O. WAKEFIELD, MRS. E. O. WAKEFIELD, A. J. PLUME AND WILLIAM PLUME, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF MURRAY KNITTING COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 982—January 10, 1924.

SYLLABUS.

Where a firm engaged in the sale direct to consumers of hosiery, sweaters, underwear, blankets and other similar merchandise, none of which products they manufactured with the exception of heavy woolen hosiery,

(*a*) Used a firm or trade name which included the word "knitting", and featured the same on their letterheads, order blanks, labels, and other stationery and literature; and

(*b*) Used the words "I hereby request you to make the following goods and ship them to me" upon their order blanks, and the wording "Manufacturers of hosiery and knit goods" upon their letterheads;

With the effect of misleading the trade and public into believing them to be the owners or operators of a mill or factory making the artices sold by them:

Held, That such misleading use of firm name, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. J. Louis Brown of Salt Lake City, Utah, for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of An Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are now and have been for more than two years last past copartners, doing business at Salt Lake City, Utah, under the firm name and style of Murray Knitting Company,

and during said period of time have been and now are engaged in the business of selling direct to customers located in Utah, Nebraska, Montana, and other States of the United States, knit hosiery, sweaters, underwear and blankets and other similar merchandise, and in shipping or causing to be shipped from the State of Utah the merchandise, when sold, to their customers at various points in said States. In the course and conduct of their said business respondents are and have been during all the times mentioned in this complaint in competition with others similarly engaged.

PAR. 2. Respondents in the course and conduct of their said business have in their newspaper advertisements, letterheads, order blanks, package labels, and other stationery and literature, prominently displayed, and do now prominently display, the trade name "Murray Knitting Company," and they and their agents travel throughout their territory, as aforesaid, and solicit and obtain direct from the users or consumers of articles sold by respondents, orders for said articles and orders on blanks prepared and furnished by respondents by which respondents are requested "to make" the articles required. The respondents also through themselves and their agents have represented and do now represent orally to their prospective customers that they are manufacturers of the articles offered for sale.

PAR. 3. The respondents did not at any of the times mentioned in this complaint and do not now own, control, or operate any factory, knitting or otherwise, and did not, and do not now, manufacture any of the articles sold or offered for sale by them, but have filled and now fill the orders received by them, from merchandise purchased by them from the stocks of manufacturers and others.

PAR. 4. The use by respondents of the name "Murray Knitting Company" in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the public into the mistaken belief that respondents own, or operate, mills or factories in which are manufactured the articles sold or offered for sale by them, and that persons buying from respondents are buying directly from manufacturers, thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed their answer by their attorney of record, J. Louis Brown, Esq., and having through their counsel entered into a stipulation as to the facts with the attorney for the Commission, which stipulation, as executed and filed, provided, among other things, that, subject to the approval of the Commission, the statement of facts therein contained might be taken as the facts of this proceeding and in lieu of the testimony before the Commission, and that the Commission might proceed further upon said stipulation and said statement of facts to make its report, state its findings as to the facts and conclusion, and to enter its order disposing of the proceeding, and the Commission now being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are now and have been for more than two years last past copartners, doing business at Salt Lake City, Utah, under the firm name and style of Murray Knitting Company, and during said period of time have been and now are engaged in the business of selling direct to customers located in Utah, Nebraska, Montana, and other States of the United States, knit hosiery, sweaters, underwear and blankets and other similar merchandise, and in shipping or causing to be shipped from the State of Utah the merchandise, when sold, to their customers at various points in said State. In the course and conduct of their said business respondents are and have been during all the times mentioned in this complaint in competition with others similarly engaged.

PAR. 2. Respondents in the course and conduct of their said business have on their letterheads, order blanks, package labels, and other stationery and literature, prominently displayed and do now prominently display, the trade name "Murray Knitting Company," and they and their agents travel throughout their territory as afore-

said and solicit and obtain direct from the users or consumers of articles sold by respondents, orders for said articles on order blanks prepared and furnished by respondents, by which respondents were formerly requested "to make" the articles required.

PAR. 3. Respondents began business in the fall of 1921 in the city of Murray, Salt Lake County, State of Utah, and during that year did very little business; in 1922 respondents did $20,000 worth of business, and during 1923 expect to do between $30,000 and $40,000 worth of business. Respondents sell and solicit their business through traveling salesmen who travel from State to State, calling directly on the customers and taking orders for the articles which they sell. These orders are transmitted by the salesmen to the company in Salt Lake City, and are filled by said respondents either from stock which they have on hand or by special orders from the manufacturers of the articles called for. Respondents instruct their salesmen not to represent that the articles which they sell are made by respondents unless in fact said articles are so made. Respondents sell knitted sweaters, underwear and hosiery, as well as blankets, woolen shirts, and leather vests. All the sweaters and underwear sold by said respondents bear a label "Murray Knitting Company" and the address of the respondents; the hosiery does not bear any label showing origin; the blankets and woolen shirts bear the label of the manufacturer of those goods in addition to respondents' label.

PAR. 4. Respondents do not manufacture any of the articles sold by them except heavy woolen hosiery. During 1922 respondents' sales of hosiery amounted to approximately $4,000. The heavy woolen knit-hosiery sold by respondents are manufactured by them, but they do not manufacture any of the silk hosiery or silk-and-wool hosiery. Of the total hosiery sales made by respondents, approximately one-third would consist of heavy all-wool hosiery for men and women, all of which is manufactured by respondents.

PAR. 5. Respondents own and have installed in their factory, and operate, two knitting machines upon which their all-wool hosiery is made. Beginning with the year 1921 respondents have manufactured all the heavy all-wool hosiery sold by them. At or about the same time the said two knitting machines were acquired and placed in operation, respondents purchased and installed four sewing machines, which are used for making alterations and making certain special articles. During May, 1923, respondents purchased and installed two knitting machines equipped for the knitting and manufacturing of all-wool sweaters; said machines are not yet in operation, but will be in time for the season of 1924. At the present time

respondents do not knit or manufacture any of the sweaters or underwear sold by them.

PAR. 6. At the time of the issuance of this complaint respondents owned and operated the two knitting machines above mentioned, on which they knitted their all-wool hosiery of heavy grade. As set forth above, they did not then and do not now knit or manufacture any of the other articles sold by them, but purchase same from various manufacturers both in the State of Utah and in eastern States.

PAR. 7. The use by respondents of the name "Murray Knitting Company" as set forth in the complaint herein creates an impression in the minds of the trade and public that the company is engaged in the process of manufacturing certain articles by the method of knitting and leads them to believe that said respondents do actually own or operate a mill or factory in which the articles sold by them are manufactured.

PAR. 8. Prior to the issuance of the complaint herein, the blanks used by respondents bore the wording "I hereby request you to make the following goods and ship them to me," and the letterheads bore the wording "Manufacturers of hosiery and knit goods." Since the receipt of the complaint issued by the Commission the wording of the order blanks has been changed to read as follows: "I hereby request you to mail the following goods," and the letterheads do not bear the wording set forth above, but only show the name of respondents and the city in which their place of business is located.

PAR. 9. The use by respondents, on their order blanks, letterheads, or other literature of the wording "I hereby request you to make the following goods and ship them to me," and "Manufacturers of hosiery and knit goods," or any other words, phrases, or sentences in which statements are made to the effect that respondents are manufacturers of the goods or articles sold by them, creates the impression in the minds of the trade and public that respondents are engaged in the process of manufacturing certain articles by the method of knitting, and leads them to believe that said respondents do actually own or operate a mill or factory in which all the articles sold by them are manufactured.

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled

"An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents and a stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondents, E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Company, cease and desist from:

(1) Doing business under the firm name and style of Murray Knitting Company or any other firm name which includes the word "knitting," unless and until such respondents actually own or operate a factory or mills in which they manufacture the knitted articles which they sell.

(2) Using any words, phrases, or sentences on the order blanks, letterheads, or any other literature distributed by them in the course of their business, which indicate or create the impression that said respondents are manufacturers of the articles which they sell, unless and until such respondents do actually manufacture said articles.

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

Commissioner Murdock dissents.

FEDERAL TRADE COMMISSION

v.

NATIONAL BISCUIT COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 836—January 23, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of biscuits, crackers, and other bakery products, which various products had long been extensively advertised and had come to be in such demand in many localities, as to make it impossible for a retail grocer successfully to conduct his business without the same, and doing over fifty-five per cent of the total business in such products in the United States; permitted chain store organizations to aggregate the separate purchases of their various retail grocery establishments or units, frequently operated in competition with comparable independent grocery establishments or units, comparably served by it and at the same cost for equal quantities, and thereby secure the advantage of the larger discounts which it extended for the larger purchases, and declined to permit other retailers to aggregate the separate purchases of their respective independent grocery establishments or units, either through the instrumentality of corporate organizations created for such purpose, or in other ways, in order to secure similar advantages and enable them to meet the competition of the aforesaid chain store units, and was followed in its aforesaid policy or practice by many other manufacturers of like products; with the result that there was thereby conferred upon one class of retail grocers an undue advantage in competing with another class in the handling of its products, with the tendency to substantially lessen competition and create a monopoly in the retail distribution thereof:

Held, That such practices, substantially as described, constituted an unfair method of competition in violation of Section 5 of the Act of Congress approved September 26, 1914, and an unlawful discrimination in price, in violation of the provisions of Section 2 of the Act of Congress approved October 15, 1914.

Mr. I. E. Lambert for the Commission.

Mr. Charles A. Vilas and *Breed, Abbott & Morgan* of New York City (*Mr. Dana T. Ackerly*, of New York, of counsel), and *Reed, Smith, Shaw & McClay* of Pittsburgh, Pa. (*Mr. George E. Shaw*, of Pittsburgh, of counsel), for respondent.

COMPLAINT.[1]

I.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create

[1] As amended.

a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the National Biscuit Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, National Biscuit Company is now, and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal factory, office and place of business located at 409 West Fifteenth Street, New York City, and is now, and at all times hereinafter mentioned has been, engaged in the business of manufacturing and selling biscuits, crackers and other bakery products, and causing the same to be transported from the States in which the same are manufactured to the purchasers thereof in the various other States of the United States, the territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, firms, copartnerships and corporations similarly engaged. That respondent is the largest single producer of such bakery products in the United States and has over 40 per cent of such trade in this country. That the Loose-Wiles Biscuit Company, of New York, is the second largest cracker and buscuit manufacturer in the United States and controls over 15 per cent of such trade in this country. That the said Loose-Wiles Biscuit Company has adopted a policy in selling its products to retailers similar to the policy of the National Biscuit Company hereafter complained of in this complaint. That there are also many smaller cracker and biscuit manufacturers scattered throughout the various States of the United States which have followed the lead of the National Biscuit Company and have adopted a policy in the sale of their products to retailers similar to the one hereinafter complained of. That the respondent has, for many years last past, extensively advertised its products, especially its package goods, such as "Uneeda Biscuits," "Nabiscoes," and "Zu-Zus," and some 300 other varieties, and thus the respondent has created a great demand for its products throughout the United States, and that in many localities the demand for such products is so great that it is impossible for a retail grocer to successfully conduct his business if he does not handle respondent's products.

PAR. 2. That the respondent, in the course of its business described in paragraph 1 hereof, for more than one year last past allowed, and still allows, discounts on the aggregate monthly purchases of its products, said discounts varying according to the amount of said

aggregate monthly purchases. That the respondent allowed, and now allows, said discounts to the owners of so-called chain stores—that is, to owners who operate more than one retail store—on the aggregate monthly purchases of all said stores. That the respondent serves each said separate retail chain store as a distinct and separate purchaser. The respondent solicits, takes orders from and makes deliveries to, each chain store unit.

PAR. 3. That in many instances the owner of a single store is in direct competition with the unit store of a chain system in selling respondent's products, and aggregate monthly purchases of respondent's products by said unit store are no greater than the aggregate monthly purchases of respondent's products by the owner of the single store; yet the respondent grants a larger discount to the unit store of the chain system than it does to the owner of the single store.

PAR. 4. That the cost of selling each unit of a chain system is the same as the cost of selling the owner of a single store whose purchases are equal to those of the chair store unit similarly located.

PAR. 5. That as the result of the application of said system of discounts as aforesaid, a discrimination in price is made between owners of retail stores purchasing similar quantities of respondent's products.

PAR. 6. That to meet this disadvantage in competing with chain stores in the selling of respondent's products as hereinbefore described in paragraphs 2, 3, 4, and 5, the owners of one retail store have pooled their orders and have given to respondent such pooled orders as are hereinafter more particularly set forth; that the owners operating but one retail store each do not do a sufficient business, individually, to justify them in purchasing as large quantities of respondent's products as are purchased by the owners operating said chain stores, and they therefore do not secure as high or as great discounts as are secured by said chain store owners; that to overcome their said disadvantage, a number of owners, each operating but one retail store, pool or combine their orders, and the pooled or combined orders have been and are given to and filled by respondent; that respondent has refused, during the period hereinbefore set forth, and still refuses, to grant discounts based upon the amount of such combined or pooled orders, but will grant only discounts based upon the respective amounts of the individual orders contained in said pooled or combined orders, which discounts are substantially lower than if the same were based upon the aggregate amount of such pooled or combined orders.

PAR. 7. That the effect of respondent's system of discounts as hereinbefore described in paragraphs 2, 3, 4, 5, and 6 is to give the

owners of such chain of retail stores an undue advantage in competing with the owners operating but one retail store in the handling of respondent's said products, which practices have the capacity to and do tend to substantially lessen competition and create a monopoly in the retail distribution of respondent's products.

PAR. 8. The above alleged acts and conduct of said respondent are all to the prejudice of the public and of said respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

II.

PARAGRAPH 1. And the Federal Trade Commission having reason to believe, from the preliminary investigation made by it, that the National Biscuit Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 2 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," issues this amended complaint, stating its charges in that respect on information and belief as follows:

That paragraphs 1, 2, 3, 4, 5, 6, and 7 of Count I hereof are hereby adopted and made a part of this count as fully as if set out herein verbatim.

PAR. 2. That the said discrimination in price by respondent between its said customers as aforesaid, has not been and is not based upon a difference in the grade, quality, or quantity of its product so sold, as aforesaid, and has not been and is not now made on account of any allowance whatever for any difference in the cost of selling or transportation of its said products, or in order to meet competition.

PAR. 3. That by reason of the facts hereinabove recited, respondent is unlawfully discriminating in price between different purchasers of its products, contrary to the prohibition thereof contained in Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, and an Act of Congress approved October 15, 1914,

the Federal Trade Commission issued and served a complaint upon the respondent, the National Biscuit Company, charging it with using unfair methods of competition in violation of the provisions of said Act approved September 26, 1914, and in violation of the provisions of Section 2 of said Act of Congress approved October 15, 1914. The respondent having entered its appearance and filed its answer herein, hearings were held before Warren R. Choate, an Examiner of the Federal Trade Commission theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of the complaint and on behalf of the respondent. Thereupon, this proceeding came on for final argument, and the Commission being fully advised in the premises, and upon consideration thereof, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, National Biscuit Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office, factory and place of business in the city of New York.

PAR. 2. That the respondent is now, and has been for more than twenty-five years, engaged in the business of manufacturing and selling biscuits, crackers and other bakery products, and causing the same to be transported from the state in which said biscuits, crackers and other bakery products are manufactured to the purchasers thereof in the various States of the United States, the territories thereof, the District of Columbia, and in foreign countries, in direct competition with other persons, firms, partnerships and corporations similarly engaged.

PAR. 3. That the respondent is the largest single producer of such bakery products in the United States; that the total value of respondent's products for the year 1914 was approximately $46,143,210; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately $89,484,000. Figuring the same in percentages, the National Biscuit Company, for the year 1914, had approximately 51.6 per cent of the biscuit and cracker business in this country; that the value of respondent's products for the year 1919 was approximately $101,707,597; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately $204,020,000. Figuring the same in percentages, the National Biscuit Company, for the year 1919, had approximately 49.9 per cent of the biscuit and cracker business in this country; that the

total value of respondent's products for the year 1921 was approximately $104,836,255; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately $187,509,000. Figuring the same in percentages, the National Biscuit Company, for the year 1921, had approximately 55.7 per cent of the biscuit and cracker business in this country; that east of the Mississippi River, for the year 1921, the National Biscuit Company had approximately 64.1 per cent of the biscuit and cracker business.

The respondent has, in the various States of the United States, 28 cracker bakeries and 8 bread bakeries, and has sales agents established in more than 192 different cities. Quoting from the testimony of Albert B. Bixler, respondent's general sales manager, "They are from Portland, Maine, to Portland, Oregon, and from Duluth to New Orleans, scattered over all the country." In 1921 the respondent had approximately 248,487 customers. Nearly every grocer in Greater New York handles respondent's products, and in the District of Columbia and the vicinity thereof, out of 2,000 grocers, every one of them carries National Biscuit Company's products. Similar conditions exist in many cities of the United States. "Uneeda Biscuit" is a cracker manufactured and sold by respondent, and is the fastest selling cracker in the world.

PAR. 4. That respondent has, for many years last past, extensively advertised its products, especially its package goods, such as "Uneeda Biscuit," "Nabisco," "Zu Zu," and some 300 other varieties, and thus, the respondent has created a great demand for its products throughout the United States. That in many localities the demand for such products is so great that it is impossible for a retail grocer to successfully conduct his business if he does not handle respondent's products.

PAR. 5. That the respondent allows a discount on the aggregate monthly purchases of its products to each customer, as follows:

No discount if the aggregate monthly purchases amount to less than $15.

5% discount on all purchases if the total amounts to $15 or more, but less than $50, in one month.

10% discount on all purchases if the total amounts to $50 or more, but less than $200 in one month.

15% discount on all purchases if the total amounts to $200 or more in any one month.

PAR. 6. The respondent allows to purchasers operating more than one retail grocery store, or what are commonly known as "chain stores" (and will be hereinafter so designated) a discount in price

on the monthly gross purchases of all the separate units or retail grocery stores of such chain store systems. The number of separate units or retail stores in the various chain store systems vary from two to more than seven thousand. The respondent serves each separate unit or retail store of a chain system as a distinct and separate purchaser—its salesmen solicit and take orders from the managers of each of the separate units or retail stores; it makes deliveries to each separate unit or retail store; in many instances the manager of the separate unit or retail store pays for respondent's goods when they are delivered, but in other instances payment is made at the headquarters of the chain system; in some instances the general manager of the chain store system at headquarters to a certain extent determines the brands or varieties of respondent's products that the separate units or retail stores of such system will carry—that is, the general manager will list the number of brands and varieties that each separate unit or retail store will be allowed to handle—but the managers of the separate units or retail stores then choose any or all of such products on such list that they think they can sell in their respective communities, and the quantities to be purchased by each separate unit or retail store in all instances are determined by the manager of said unit or retail store and given to respondent's salesmen when he calls; in some instances, however, the manager of the separate unit or retail store determines the brands or varieties that his store will handle, and has complete charge of the ordering of biscuits and crackers from the respondent. Different units or retail stores of a chain system in many instances handle different brands or varieties of respondent's products.

PAR. 7. There are some very small, and likewise some very large, units or retail grocery stores of chain systems. The purchases from respondent of some of the small units or retail stores of the chain system amount to less than $15 a month, while the purchases of some of the large units or retail stores amount to several hundred dollars. There are some very small, and likewise some very large independent retail grocery stores. The purchases from respondent of some of the small independent retail grocers amount to less than $15 a month, while the purchases from some of the large independent retail grocers amount to several hundred dollars.

PAR. 8. The same salesman, in some instances, who takes orders from purchasers operating separate units or retail grocery stores of a chain system also takes orders from purchasers operating independent retail stores in such salesman's territory, and the same deliveryman who delivers respondent's products to the separate units or retail grocery stores of the chain system also makes deliveries of

respondent's products to the independent retail store, in the course of his rounds in his territory. In some instances payments for respondent's goods are made by the purchasers operating separate units or retail grocery stores of a chain system, in the same way that the payments are made by the purchasers operating independent retail groceries.

PAR. 9. In many instances a purchaser operating a single retail store is in direct competition with a purchaser operating a separate unit or retail grocery store of a chain system in selling respondent's products, and the aggregate monthly purchases of respondent's products by said purchaser operating a separate unit or retail grocery store of the chain system are no greater than the aggregate monthly purchases of respondent's products by the purchaser operating a single retail store; yet the respondent grants a larger discount to the purchaser operating a separate unit or retail grocery store of the chain system than it does to the purchaser operating a single retail store.

PAR. 10. The respondent sells its products to purchasers operating separate units or retail grocery stores of grocery chain systems where such separate units or retail stores resell a portion of such purchases to other retailers.

PAR. 11. The respondent refuses to sell purchasers operating independent retail grocery stores where such independent retail grocery stores resell a portion of such purchases to other retailers.

PAR. 12. The cost of selling a purchaser operating a separate unit or retail grocery store of a chain system is the same as the cost of selling a purchaser operating an independent retail store whose purchases are equal to those of the separate unit or retail grocery store of the chain system and similarly located.

PAR. 13. As the result of the application of said system of discounts as aforesaid, a discrimination in price is made between purchasers operating retail grocery stores purchasing similar quantities of respondent's products.

PAR. 14. In order to compete with retail units of chain store systems in selling National Biscuit Company products, groups of independent retailers in many localities in different parts of the United States have attempted to combine their purchases and obtain discounts equal to those granted to the chain stores:

(a) In some instances one of the independent retailers would buy for two or three of his neighbors—placing the order, receiving all deliveries at his store, and paying for the goods, the other grocers in the combination calling at his store and getting the goods thus ordered and received by him.

(b) In some instances groups of independent retailers have requested the National Biscuit Company to make to them deliveries similar to those it makes to the separate units or retail grocery stores of chain systems; to take orders from them as it takes orders from separate units or retail grocery stores of chain systems; and have offered to pay respondents cash on delivery, or in the same way as the chain stores pay; and have further offered to meet any requirements the respondent makes of the chain systems.

(c) In other instances corporations have been formed, in which the stock is owned exclusively by retail grocers. These corporations have requested the National Biscuit Company to sell their stockholders or members on the same terms and in the same manner as said respondent sells to separate units or retail grocery stores of chain systems. These corporations have offered cash on delivery for the goods, or to pay for them as the chain stores pay, and to meet every requirement that the National Biscuit Company makes of the chain systems.

The National Biscuit Company has, in every instance except along the Pacific coast, refused to grant discounts on gross purchases of independent retailers associated or combined together as set out in subparagraphs (a), (b) and (c) of this paragraph, but have continued to sell each independent grocer comprised in the above-mentioned attempted associations or combinations, and to grant discounts only on the purchases of each separate member of the association or combination.

PAR. 15. The respondent sells its products to purchasers operating grocery chain systems, where such systems divide their purchases among the separate units or retail grocery stores of the system.

PAR. 16. The respondent refuses to sell associations or combinations of independent retail grocers operating retail grocery stores similar to the separate units or retail grocery stores of the grocery chain system, where said associations or combinations divide their purchases among the members of the association or combination.

PAR. 17. It costs the respondent no more to sell a specified number of purchasers operating independent retail stores than it costs to sell the same number of purchasers operating separate units or retail grocery stores of chain systems buying the same quantities and similarly located.

PAR. 18. In many localities along the Pacific coast there are biscuit and cracker manufacturers who enjoy a larger proportion of the biscuit and cracker business than the respondent.

PAR. 19. Most of the biscuit and cracker manufacturers along the Pacific coast sell associations and combinations of retail grocers in the same way as they sell chain systems, allowing them a discount on the gross purchases of all their members.

PAR. 20. The respondent, who refuses to sell in the East and Middle West to associations and combinations of retail grocers and allow them a discount on the gross purchases of all their members, does sell to such associations and combinations along the Pacific coast, and gives them a discount on the gross purchases of all their members. The National Biscuit Company sold the Spartan Grocers, of Los Angeles, California, a cooperative association composed of independent retail grocers, and allowed them a discount on the gross purchases of all its members, for approximately three years, and was so selling them at the time of the taking of testimony in this proceeding. Respondent also was selling the United Grocers of Oregon, another cooperative association composed of independent retail grocers, and was allowing them a discount on the gross purchases of the associated members at the time of the taking of testimony in this proceeding at Portland, Oregon.

PAR. 21. Respondent's products, being nationally known, make exceptionally good "leaders," and the chain stores are very frequently using them as such. (When a retailer sells a well-known product at a very low price, to attract attention and lure customers into his store, he is said to be selling such product as a "leader.")

PAR. 22. In many instances the purchaser operating an independent retail grocery store, purchasing equal amounts with a competing purchaser operating a separate unit or retail grocery store of a chain system, can not buy respondent's products at as low a price as the separate unit or retail grocery of the chain system is selling such products, because of difference in discounts.

PAR. 23. In many instances, independent retailers purchasing less than $200.00 per month of National Biscuit Company products (which include approximately 90% of respondent's customers in the United States) are unable to successfully compete with purchasers operating separate units or retail grocery stores of chain systems in the sale of respondent's products, because of the difference in discounts.

PAR. 24. In many localities in the different parts of the United States, independent retail grocers who do not carry National Biscuit Company products or who do not sell respondent's products at a price equal to that at which the separate units or retail stores of chain systems are selling such products, not only lose the sale of

respondent's products, but also thereby lose the opportunity of supplying customers with other commodities.

PAR. 25. Many biscuit and cracker manufacturers, especially those east of the Pacific Coast territory, have followed the lead of the National Biscuit Company, and have adopted a similar policy, as hereinbefore described, in the sale of their products to retailers. The Loose-Wiles Biscuit Company, of New York, the second largest biscuit and cracker manufacturer in the United States, has a like policy and so have many smaller biscuit and cracker manufacturers.

PAR. 26. That the effect of the application of respondent's system of discounts, as hereinbefore set out, gives to one class of retail grocers an undue advantage in competing with another class of retail grocers in the handling of respondent's products, which has the capacity to and does tend to substantially lessen competition and to create a monopoly in the retail distribution of respondent's products.

CONCLUSION

That the practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and violate the provisions of Section 2 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony and evidence received by the Examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, the National Biscuit Company, has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has violated the provisions of Section 2 of an Act of Congress entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

It is now ordered, That respondent, National Biscuit Company, its officers, directors, agents, representatives, servants and employees, cease and desist, in interstate commerce, directly or indirectly—

1. From discriminating in price between purchasers operating separate units or retail grocery stores of chain systems and purchasers operating independent retail grocery stores of similar kind and character purchasing similar quantities of respondent's products, where such discrimination is not made on account of difference in the grade or quality of the commodity sold, nor for a due allowance in the difference in the cost of selling or transportating, nor in good faith to meet competition in the same or different communities.

2. From giving to purchasers operating two or more separate units or retail grocery stores or chain systems a discount on the gross purchases of all the separate units or retail stores of such chain system, where the same or a similar discount on gross purchases is not allowed or given to associations or combinations of independent grocers operating retail grocery stores similar to the separate units or stores of such chain system.

It is further ordered, That respondent, within sixty (60) days after the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

LOOSE-WILES BISCUIT COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 837—January 23, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of biscuits, crackers, and other bakery products, long extensively advertised by it and in great demand throughout the United States, and which constituted the second largest producer of such products in the country and controlled approximately fifteen per cent of the trade therein; permitted chain store organizations to aggregate the separate purchases of their various retail grocery establishments or units, frequently operated in competition with comparable independent grocery establishments or units, comparably served by it and at the same cost for equal quantities, and thereby secure the advantage of the larger discounts which it extended for the larger purchaser, and declined to permit other retailers to aggregate the separate purchases of their respective independent grocery establishments or units, either through the instrumentality of corporate organizations created for such purpose, or in other ways; in order to secure similar advantages and enable them to meet the competition of the aforesaid chain store units; with the result that there was thereby conferred upon one class of retail grocers an undue advantage in competing with another class in the handling of its products, with the tendency to substantially lessen competition and create a monopoly in the retail distribution thereof:

Held, That such practices, substantially as described, constituted an unfair method of competition in violation of Section 5 of the Act of Congress approved September 26, 1914, and an unlawful discrimination in price, in violation of the provisions of Section 2 of the Act of Congress approved October 15, 1914.

Mr. I. E. Lambert for the Commission.

Patterson, Eagle, Greenough & Day, of New York City (*J. Frederick Eagle* and *Carroll G. Walter*, of New York, of counsel), for respondent.

COMPLAINT.[1]

I.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission

[1] As amended.

charges that the Loose-Wiles Biscuit Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Loose-Wiles Biscuit Company, is now, and was at all times hereinafter mentioned, a corporation organized existing and doing business under and by virtue of the laws of the State of New York, having bakeries scattered throughout the various cities of the United States and with its center office located in Kansas City, Mo.; that the respondent owns the entire capital stock, except the qualifying shares, and directs, operates and controls the policies of the following corporations:

Loose-Wiles Biscuit Company of Missouri,
Loose-Wiles Biscuit Company of Illinois,
Loose-Wiles Biscuit Company of Maine,
Loose-Wiles Biscuit Company of Oklahoma,
Loose-Wiles Biscuit Company of Tennessee,
The Austin Dog Bread & Animal Food Company of Mass.,
Elbira Realty Company of Missouri;

that respondent is now and at all times hereinafter mentioned has been engaged in the business of manufacturing and selling biscuits, crackers and other bakery products and causing the same to be transported from the States in which the same are manufactured to the purchasers thereof in the various other States of the United States, the territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, firms, copartnerships and corporations similarly engaged; that respondent is the second largest single producer of such bakery products in the United States and controls over 15% of such trade in this country; that the National Biscuit Company of New York is the largest single producer of biscuits, crackers and other bakery products in the United States and has over 40% of such trade in this country; that the said National Biscuit Company has adopted a policy in selling its products to retailers similar to the policy of the Loose-Wiles Biscuit Company hereafter complained of in this complaint; that the respondent has for many years last past extensively advertised its products, especially its package goods, such as "Tak-hom-a Biscuits," "Perfettos," and "Yum Yums," and some three hundred other varieties and thus the respondent has created a great demand for its products throughout the United States.

PAR. 2. That the respondent, in the course of its business described in paragraph 1 hereof, for more than one year last past allowed, and still allows, discounts on the aggregate monthly purchases of its

product said discounts varying according to the amount of said aggregate monthly purchases. That the respondent allowed, and now allows, said discounts to the owners of so-called chain stores—that is, to owners who operate more than one retail store—on the aggregate monthly purchases of all said stores. That the respondent serves each said separate retail chain store as a distinct and separate purchaser. The respondent solicits, takes orders from and makes deliveries to, each chain store unit.

PAR. 3. That in many instances the owner of a single store is in direct competition with the unit store of a chain system in selling respondent's products, and the aggregate monthly purchases of respondent's products by said unit store are no greater than the aggregate monthly purchases of respondent's products by the owner of the single store; yet the respondent grants a larger discount to the unit store of the chain system than it does to the owner of the single store.

PAR. 4. That the cost of selling each unit of a chain system is the same as the cost of selling the owner of a single store whose purchases are equal to those of the chain store unit similarly located.

PAR. 5. That as the result of the application of said system of discounts as aforesaid, a discrimination in price is made between owners of retail stores purchasing similar quantities of respondent's products.

PAR. 6. That to meet this disadvantage in competing with chain stores in the selling of respondent's products as hereinbefore described in paragraphs 2, 3, 4, and 5, the owners of one retail store have pooled their orders and have given to respondent such pooled orders as are hereinafter more particularly set forth; that the owners operating but one retail store each do not do a sufficient business, individually, to justify them in purchasing as large quantities of respondent's products as are purchased by the owners operating said chain stores, and they therefore do not secure as high or as great discounts as are secured by said chain store owners; that to overcome their said disadvantage, a number of owners, each operating but one retail store, pool or combine their orders, and the pooled or combined orders have been and are given to and filled by respondent; that respondent has refused, during the period hereinbefore set forth, and still refuses, to grant discounts based upon the amount of such combined or pooled orders, but will grant only discounts based upon the respective amounts of the individual orders contained in said pooled or combined orders, which discounts are substantially lower than if the same were based upon the aggregate amount of such pooled or combined orders.

PAR. 7. That the effect of respondent's system of discounts as hereinbefore described in paragraphs 2, 3, 4, 5, and 6 is to give the owners of such chain of retail stores an undue advantage in competing with the owners operating but one retail store in the handling of respondent's said products, which practices have the capacity to and do tend to substantially lessen competition and create a monopoly in the retail distribution of respondent's products.

PAR. 8. The above alleged acts and conduct of said respondent are all to the prejudice of the public and of said respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," approved September 26, 1914.

II.

PARAGRAPH 1. And the Federal Trade Commission having reason to believe, from the preliminary investigations made by it, that the Loose-Wiles Biscuit Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 2 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," issues this amended complaint, stating its charges in that respect on information and belief as follows:

That paragraphs 1, 2, 3, 4, 5, 6, and 7 of Count I hereof are hereby adopted and made a part of this count as fully as if set out herein verbatim.

PAR. 2. That the said discrimination in price by respondent between its said customers as aforesaid, has not been and is not based upon a difference in the grade, quality, or quantity of its product so sold, as aforesaid, and has not been and is not now made on account of any allowance whatever for any difference in the cost of selling or transportation of its said products, or in order to meet competition.

PAR. 3. That by reason of the facts hereinabove recited, respondent is unlawfully discriminating in price between different purchasers of its products, contrary to the prohibition thereof, contained in Section 2 of an Act of Congress entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, and an Act of Congress approved October 15, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, the Loose-Wiles Biscuit Company, charging it with using unfair methods of competition in violation of the provisions of said Act approved September 26, 1914, and in violation of the provisions of Section 2 of said Act approved October 15, 1914. The respondent having entered its appearance and filed its answer herein, hearings were held before John W. Addison, an Examiner of the Federal Trade Commission theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of the complaint and on behalf of the respondent. Thereupon this proceeding came on for final argument, and the Commission being fully advised in the premises, and upon consideration thereof, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Loose-Wiles Biscuit Company, is now and was at all times hereinafter mentioned, a corporation organized, existing and doing business under the laws of the State of New York, and through stock ownership in other companies controlling nine other plants, located as follows: One, each, at St. Louis, Missouri; Omaha, Nebraska; Kansas City, Missouri; Dallas, Texas; Chicago, Illinois; Minneapolis, Minnesota, and Chelsea, Massachusetts; and two in Boston, Massachusetts; and having its central office located in Kansas City, Missouri, where most of its officers reside. Respondent owns the entire capital stock except qualifying shares, and directs, operates and controls the policies of the following corporations: Loose-Wiles Biscuit Company of Illinois, Loose-Wiles Biscuit Company of Missouri, Loose-Wiles Biscuit Company of Maine, Loose-Wiles Biscuit Company of Oklahoma, Loose-Wiles Biscuit Company of Tennessee, and Austin Dog Bread and Animal Food Company of Massachusetts.

PAR. 2. Respondent is now, and at all times hereinafter mentioned has been, directly and through said controlled companies, engaged in the business of manufacturing and selling biscuits, crackers and other bakery products, and causing the same to be transported from the States in which the same are manufactured to the purchasers thereof in the various other states of the United States, the territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 3. The respondent is the second largest single producer of such bakery products in the United States. It maintains branches in over 100 cities and controls approximately 15 per cent of such trade in this country. The National Biscuit Company of New York, which is the largest single producer of biscuits, crackers and other bakery products in the United States, has adopted a policy in selling its products to retailers similar to the policy of the Loose-Wiles Biscuit Company complained of in said complaint herein. The respondent has, for many years last past, extensively advertised its products, especially its package goods—"Tak-hom-a Biscuits," "Perfettos," and "Yum-Yums," and a large number of other varieties, and has created a great demand for its products in the United States.

PAR. 4. The respondent, in the course of its business described in paragraphs 1 and 2 hereof, for more than one year last past allowed, and still allows, discounts on the aggregate monthly purchases of its products, said discounts varying according to the amount of said aggregate monthly purchases; for example, aggregate monthly purchases of specified amounts as indicated below, in addition to a cash discount of one per cent, entitled purchasers in New York and Missouri, respectively, to discounts as follows:

Value of purchase	New York	Missouri
	Per cent	*Per cent*
$15	5	5
35	5	10
50	10	10
100	10 and 2½	10
150	10 and 5	15
200	15	15

PAR. 5. The respondent allows to purchasers operating more than one retail grocery store, or what are commonly known as "chain stores" (and will be hereinafter so designated) a discount in price on the monthly gross purchases of all the separate units or retail grocery stores of such chain store systems. The number of separate units or retail stores in the various chain store systems vary from two to more than seven thousand. The respondent serves each separate unit or retail store of a chain system as a distinct and separate purchaser—its salesmen solicit and take orders from the managers of each of the separate units or retail stores; it makes deliveries to each separate unit or retail store; in many instances the manager of the separate unit or retail store pays for respondent's goods when they are delivered, but in other instances payment is made at the headquarters of the chain system; in some instances the general

manager of the chain store system at headquarters to a certain extent determines the brands or varieties of respondent's products that the separate units or retail stores of such system will carry—that is, the general manager will list the number of brands and varieties that each separate unit or retail store will be allowed to handle—but the managers of the separate units or retail stores then choose any or all of such products on such list that they think they can sell in their respective communities, and the quantities to be purchased by each separate unit or retail store in all instances are determined by the manager of said unit or retail store and given to respondent's salesman when he calls; in some instances, however, the manager of the separate unit or retail store determines the brands or varieties that his store will handle and has complete charge of the ordering of biscuits and crackers from the respondent. Different units or retail stores of a chain system in many instances handle different brands or varieties of respondent's products.

PAR. 6. There are some very small and likewise some very large units or retail grocery stores of chain systems. The purchases from respondent of some of the small units or retail stores of the chain system amount to less than $15 a month, while the purchases of some of the large units or retail stores amount to several hundred dollars. There are some very small and likewise some very large independent retail grocery stores. The purchases from respondent of some of the small independent retail grocers amount to less than $15 a month, while the purchases from some of the large independent retail grocers amount to several hundred dollars.

PAR. 7. The same salesman, in some instances, who takes orders from purchasers operating separate units or retail grocery stores of a chain system also takes orders from purchasers operating independent retail stores in such salesman's territory, and the same deliveryman who delivers respondent's products to the separate units or retail grocery stores of the chain system also makes deliveries of respondent's products to the independent retail store, in the course of his rounds in his territory. In some instances payments for respondent's goods are made by the purchasers operating separate units or retail grocery stores of a chain system in the same way that the payments are made by the purchasers operating independent retail groceries.

PAR. 8. In many instances a purchaser operating a single retail store is in direct competition with a purchaser operating a separate unit or retail grocery store of a chain system in selling respondent's products, and the aggregate monthly purchases of respondent's products by said purchaser operating a separate unit or retail grocery

store of the chain system are no greater than the aggregate monthly purchases of respondent's products by the purchaser operating a single retail store; yet the respondent grants a larger discount to the purchaser operating a separate unit or retail grocery store of the chain system than it does to the purchaser operating a single retail store.

PAR. 9. The respondent sells its products to purchasers operating separate units or retail grocery stores of grocery chain systems where such separate units or retail stores resell a portion of such purchases to other retailers.

PAR. 10. The respondent refuses to sell purchasers operating independent retail grocery stores where such independent retail grocery stores resell a portion of such purchases to other retailers.

PAR. 11. The cost of selling a purchaser operating a separate unit or retail grocery store of a chain system is the same as the cost of selling a purchaser operating an independent retail store whose purchases are equal to those of the separate unit or retail grocery store of the chain system and similarly located.

PAR. 12. As the result of the application of said system of discounts as aforesaid, a discrimination in price is made between purchasers operating retail grocery stores purchasing similar quantities of respondent's products.

PAR. 13. In order to compete with retail units of chain store systems in selling Loose-Wiles Biscuit Company products, groups of independent retailers in many localities in different parts of the United States have attempted to combine their purchases and obtain discounts equal to those granted to the chain stores:

(a) In some instances one of the independent retailers would buy for two or three of his neighbors, placing the order, receiving all deliveries at his store, and paying for the goods, the other grocers in the combination calling at his store and getting the goods thus ordered and received by him.

(b) In some instances groups of independent retailers have requested the Loose-Wiles Biscuit Company to make to them deliveries similar to those it makes to separate units or retail grocery stores of chain systems; to take orders from them as it takes orders from separate units or retail grocery stores of chain systems; and have offered to pay respondent cash on delivery, or in the same way as the chain stores pay; and have further offered to meet any requirements the respondent makes of the chain systems.

(c) In other instances corporations have been formed in which the stock is owned exclusively by retail grocers. These

corporations have requested the Loose-Wiles Biscuit Company to sell their stockholders or members on the same terms and in the same manner as said respondent sells to separate units or retail grocery stores of chain systems. These corporations have offered cash on delivery for the goods, or to pay for them as the chain stores pay, and to meet every requirement that the Loose-Wiles Biscuit Company makes of the chain systems.

The Loose-Wiles Biscuit Company has in every instance refused to grant discounts on gross purchases of independent retailers associated or combined together as set out in subparagraphs (a), (b) and (c) of this paragraph, but have continued to sell each independent grocer comprised in the above-mentioned attempted associations or combinations and to grant discounts only on the purchases of each separate member of the association or combination.

PAR. 14. The respondent sells its products to purchasers operating grocery chain system where such systems divide their purchases among the separate units or retail grocery stores of the system.

PAR. 15. The respondent refuses to sell associations or combinations of independent retail grocers operating retail grocery stores similar to the separate units or retail grocery stores of the chain store systems, where said associations or combinations divide their purchases among the members of the association or combination.

PAR. 16. It costs the respondent no more to sell a specified number of purchasers operating independent retail stores than it costs to sell the same number of purchasers operating separate units or retail grocery stores of chain systems buying the same quantities and similarly located.

PAR. 17. Respondent's products, being nationally known, make exceptionally good "leaders," and the chain stores are very frequently using them as such. (When a retailer sells a well-known product at a very low price, to attract attention and lure customers into his store, he is said to be selling such product as a "leader.")

PAR. 18. In many instances the purchaser operating an independent retail grocery store, purchasing equal amounts with a competing purchaser operating a separate unit or retail grocery store of a chain system, can not buy respondent's products at as low a price as the separate unit or retail grocery store of the chain system is selling such products, because of difference in discounts.

PAR. 19. In many instances independent retailers purchasing less than $200 per month of Loose-Wiles Biscut Company products are unable to successfully compete with purchasers operating separate units or retail grocery stores of chain systems in the sale of respondent's products, because of difference in the discounts.

PAR. 20. In many localities in the different parts of the United States independent retail grocers who do not carry Loose-Wiles Biscuit Company's products or who do not sell respondent's products at a price equal to that at which the separate units or retail stores of chain systems are selling, such grocers not only lose the sale of respondent's products but also thereby lose the opportunity of supplying customers with other commodities.

PAR. 21. That the effect of the application of respondent's system of discounts, as hereinbefore set out, gives to one class of retail grocers an undue advantage in competing with another class of retail grocers in the handling of respondent's products, which has the capacity to and does tend to substantially lessen competition and to create a monopoly in the retail distribution of respondent's products.

CONCLUSION.

That the practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and violate the provisions of Section 2 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."

ORDER TO CEASE AND DESIST.

The proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony and evidence received by the Examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, the Loose-Wiles Biscuit Company has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes;" and has violated the provisions of Section 2 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:

It is now ordered, That respondent, Loose-Wiles Biscuit Company, its officers, directors, agents, representatives, servants, and employees, cease and desist, in interstate commerce, directly or indirectly.

1. From discriminating in price between purchasers operating separate units or retail grocery stores of chain systems and purchasers operating independent retail grocery stores of similar kind and character purchasing similar quantities of respondent's products, where such discrimination is not made on account of difference in the grade or quality of the commodity sold, nor for a due allowance for the difference in the cost of selling or transporting, nor in good faith to meet competition in the same or different communities.

2. From giving to purchasers operating two or more separate units or retail grocery stores of chain systems a discount on the gross purchases of all the separate units or retail stores of such chain system, where the same or a similar discount of gross purchases is not allowed or given to associations or combinations of independent grocers operating retail grocery stores similar to the separate units or stores of such chain system.

It is further ordered, That respondent, within sixty (60) days after the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

JACOB HOCHMAN AND SAMUEL LEVINE, AS INDIVIDUALS AND TRADING UNDER THE NAME AND STYLE OF HOCHMAN & LEVINE.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 954—January 26, 1924.

SYLLABUS.

Where a firm engaged in the manufacture of men's shirts from various domestic materials and in the sale thereof to retail dealers, labeled and sold the same as "English broadcloth," with the effect of misleading the trade and a substantial portion of the purchasing public in respect of the source of the material of which said garments were made:

Held, That the sale of products labeled as above set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Jay A. Gilman of New York City, for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Jacob Hochman and Samuel Levine, as individuals and copartners trading under the name and style of Hochman & Levine, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. The said respondents, Jacob Hochman and Samuel Levine, are now and were at and during all the times hereinafter mentioned doing business under the firm name and style of Hochman & Levine, with their principal office and factory in the City of New York, in the State of New York. They are now and were during all the times hereinafter mentioned engaged in the business of manufacturing and selling men's shirts, and in the course of their said business have sold and do now sell said shirts to retail dealers throughout the several States of the United States and have caused

and do now cause the said shirts when so sold to be transported from their factory in the City of New York to the purchasers thereof at points in the various states of the United States. In the course and conduct of their business said respondents have been and now are in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of men's shirts in interstate commerce.

PAR. 2. During the year 1919 certain English manufacturers of cotton goods began the manufacture from Egyptian cotton and sale of a special kind of cotton fabric, which said fabric, owing to its peculiar and distinctive process of manufacture, possessed great durability, high sheen and a silk-like texture, and was widely sold in England under the name of "English Broadcloth" and extensively used in England in the manufacture of men's shirts, pyjamas and similar garments. During the year 1919 American importers imported from England considerable quantities of said cotton fabric which they sold to shirt manufacturers in this country as "English Broadcloth," since which time said fabric has been imported and widely advertised by American importers and others as "English Broadcloth" and same under said name has become very popular and in great demand by American manufacturers and also by the purchasing public and there is at the present time a great demand for English Broadcloth shirts in the United States. Since the importation of said fabric a number of American cotton goods manufacturers have manufactured and are now manufacturing a cotton fabric or cloth somewhat similar in texture and appearance to the said fabric above mentioned, but which is in fact inferior in quality and cheaper in price.

PAR. 3. Said respondents, in the course of their said business as described in paragraph 1 hereof, for more than one year last past, have manufactured, labeled, branded and sold and are now manufacturing, labeling, branding and selling men's shirts as "English Broadcloth," which said shirts are manufactured from the cotton cloth manufactured in the United States, referred to and described in paragraph 2 hereof.

PAR. 4. Such labeling and branding and sale of shirts by respondents has the tendency and capacity to confuse and deceive the purchasing public and to induce them to buy the shirts made by respondents in the mistaken belief that they are made from the material first described in paragraph 2 hereof, or from material made in England and imported into the United States.

PAR. 5. There are in the United States a number of manufacturers of men's shirts who are in competition with said respondents who do

not label, brand and sell their shirts manufactured from a cloth manufactured by American manufacturers so as to mislead and deceive the public into the belief that said shirts are manufactured from cloth manufactured in England and imported into the United States. There are also a large number of manufacturers of men's shirts in the United States who import the cotton cloth described in paragraph 2 hereof as "English Broadcloth" who label, brand, and sell said shirts as "English Broadcloth" shirts in competition with said respondents.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public, and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents Jacob Hochman and Samuel Levine, copartners, doing business under the firm name and style of Hochman & Levine, charging them individually and as copartners with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission, and the respondents, before Edward M. Averill, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing on briefs and oral argument, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Jacob Hochman and Samuel Levine, from or about April 1, 1921, to on or about September 1, 1922, were partners, doing business under the name and style of Hochman & Levine, with principal office and factory in the City of New York and the State of New York, and during such period were engaged

in the business of manufacturing and selling men's shirts, which said shirts they sold to retail dealers throughout the various States of the United States, and caused the said shirts, when sold, to be transported in interstate commerce from the factory in New York City to the purchasers thereof at various points in States of the United States other than the State of New York; and in the course and conduct of their business were engaged in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of men's shirts.

PAR. 2. During the year 1919 certain American importers learned of a cotton fabric then being manufactured in England which, by reason of its construction and the quality of the yarn used, possessed a distinctive appearance and was, in fact, a new species of cotton cloth. This cloth was made from the finest grade of Egyptian long staple cotton yarn, the counts running from 156 by 84 to 144 by 76, two-ply, both ways, 100 yarn, gassed and highly mercerized, weighing about 4½ pounds to the yard. This fabric possessed a fine, silky sheen, great durability, and resembled a fabric made of silk so closely that it was named by the English mills and dealers, "taffeta poplin."

PAR. 3. This new fabric the American importers bought, shipped over to the United States, and introduced the same to the manufacturers of shirts, who at once designated it as a "broadcloth," on account of the resemblance of this very superior cotton to a silk fabric which for a generation or more has been made in America and known as a "silk broadcloth."

PAR. 4. This new species of cotton cloth at once became known in the United States as "English Broadcloth." From the start it became very popular, the demand exceeded the supply, and between the last of 1919 and the first of 1921 a very high reputation was established for this cloth among the retail dealers in shirts throughout the States of the United States, and with the consumers, and "English Broadcloth" shirts came into great demand; and thereafter, about the middle of the year 1921, there appeared upon the market fabrics of similar appearance, but of inferior yarn, inferior workmanship, and of less durability than the fabric described above. These fabrics were in various grades and were made by both English and American mills. These fabrics were bought by American shirt manufacturers and were by some of them sold to retailers as "English Broadcloth," and often labeled "English Broadcloth," without regard to whether the cloth of which the shirts were made was imported from England or not.

PAR. 5. The word "broadcloth" is not, in England, applied to any cotton fabric, but for centuries has been applied to a very fine woolen fabric of unusual width, from which men's dress suits and women's skirts and tailored suits are made, and, in the United States, the word "broadcloth" is also used to designate the same woolen fabric. The words "silk broadcloth" were used in the shirt industry to designate a fine fabric made of silk, and from which shirts were made, and after the introduction from England, in 1919, of the fine cotton fabric described in paragraph 2, the American mills manufactured a similar cotton cloth, which was known to the shirt manufacturers in the United States as "broadcloth." The American mills do not style or designate the cotton fabric produced by them "English Broadcloth."

PAR. 6. The respondents, Hochman and Levine, in the course and conduct of their business in interstate commerce, bought the cotton fabric termed "broadcloth" made by American mills and manufactured same into shirts, which shirts they sold to retailers as "English Broadcloth," and also labeled the shirts made from the American made cloth "English Broadcloth," and the respondents also made up shirts from a cloth known as "airplane cloth," which is a fabric not of a broadcloth construction and which was not of English origin, which shirts were labeled and sold by respondents as "English Broadcloth"; and the respondents also made up and sold shirts from fabrics which were not of a broadcloth construction and which did not have their origin in England and which are not imported from England, and these shirts the respondents represented to the retailers to be made of "English Broadcloth," and labeled the said shirts "English Broadcloth."

PAR. 7. The word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings denotes to the purchaser that the fabric was made in England, is the product of English mills, and among a large proportion of the retailers and a substantial proportion of the consuming public of the United States the word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings, has acquired a reputation for excellence in quality and has a recognized value.

PAR. 8. The words "English Broadcloth," as applied to the cotton fabric described in paragraph 2 hereof, have not acquired a secondary meaning, but in the minds of the retailers and a substantial portion of the purchasing public are understood to signify and represent that the garment so labeled is made from a material which is made in and imported from England.

PAR. 9. The labels, "English Broadcloth," as used by the respondents, are literally false, the cloth of which the garments were made

not being made in England and not being a product of English mills, and are calculated to, and, in fact, do deceive, not only the retailers, but a substantial portion of the purchasing public, into the belief that the shirts so labeled are made of material imported from England, this deception being due primarily to the words of the label.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondents, the testimony and evidence submitted, and the briefs and argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Jacob Hochman and Samuel Levine, do cease and desist from—

Using the words "English Broadcloth" as a label or brand for shirts, or other garments, unless such garments be made from broadcloth made in and imported from England.

And it is further ordered, That the respondents, within sixty (60) days after the date of the 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

TEXAS-ATLANTIC OIL COMPANY ET AL.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 933—February 8, 1924.

SYLLABUS.

Where an oil company and certain individuals responsible for the organization thereof or associated therewith and interested in the sale of its stock; in promoting the same made numerous false and misleading statements and representations in their prospectuses, circulars, folders, and other advertising literature, in respect of certain oil producing properties alleged to be those of the company, in respect of the company's alleged tremendous production, and in respect of the alleged past and prospective payment of large dividends, and displayed in said advertising matter pictures of derricks and storage tanks, purporting to be located on the company's properties; the fact being that the company owned no such properties nor wells, produced no oil and owned no tanks, that said pretended dividends were paid from money advanced by another concern in order to induce and augment the sale of the company's stock, and that the company, while such intensive campaign to sell its stock was in progress, was insolvent, burdened with great indebtedness, and without income of any kind except from the sale of stock; with the result that the public was misled and deceived and induced to expend many thousands of dollars for the stock of such company:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. James M. Brinson for the Commission.

Mr. E. C. Kingsburg, of Ft. Worth, Texas, for respondents.

Mr. P. E. Dedmon, of Smith, Dedmon, Marks, Potter & Smith, of Ft. Worth, Texas, for respondent, V. C. Nelson.

Mr. Richard A. Dunnigan, of Los Angeles, Calif., for respondent, R. J. Leavitt.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Texas-Atlantic Oil Company, G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt and W. Lincoln Wilson, hereinafter referred to as respondents, have been and are using unfair methods of com-

petition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Texas-Atlantic Oil Company, is a joint stock association, organized under and by virtue of a Declaration of Trust dated April 7, 1920, with its principal place of business at Fort Worth, Texas, and having an authorized capital stock of $3,000,000, divided into 3,000,000 shares of the par value of $1.00 each. Its general business purposes are to acquire oil and gas leases on lands in the State of Texas and elsewhere, and drilling wells thereon for the production of oil and gas. Respondent G. P. Edgell is one of the organizers and promoters of respondent company, and during the period from, to wit, April 7, 1920, to May 22, 1920, acted as trustee of respondent company. Respondent R. J. Leavitt is an organizer and promoter of respondent company, and at all times from and after the date of organization of respondent company, as aforesaid, acted as president and trustee of respondent company. Respondent J. B. Sikes is, and at all times from and after, to wit, May 22, 1920, has been trustee and vice-president of respondent company. Respondent V. C. Nelson is, and at all times from and after, to wit, May 22, 1920, has been, a trustee and secretary of respondent company. Respondent W. Lincoln Wilson does business under the unincorporated trade name and style of Texas National Trust Company, and from and after, to wit, April 7, 1920, also acted as so-called fiscal agent of respondent company.

PAR. 2. Respondent Wilson, acting individually and under the unincorporated trade name and style of Texas National Trust Company, sold or assigned on or about April 7, 1920, to respondent company, acting through respondents Edgell and Leavitt, certain oil, and gas leases covering approximately 10,208 acres of land in the State of Texas, for, and in consideration of, which properties respondent company issued and agreed to issue to respondent Wilson 1,000,000 shares of the capital stock of respondent company. On or about April 7, 1920, respondent Wilson, acting individually and under the unincorporated trade name and style of Texas National Trust Company, entered an agreement with respondent company whereby said respondent Wilson underwrote the remaining 2,000,000 shares of capital stock of respondent company. The said 1,000,000 shares of capital stock issued to respondent Wilson, as aforesaid, and the said 2,000,000 shares of capital stock underwritten, as aforesaid, by respondent Wilson will hereinafter be referred to as securities of respondent company. From and after the date of organization of respondent company, as aforesaid, respondent Edgell, acting individually and as president and trustee of respondent company; respondent Leavitt, acting individually and as officer and trustee of

respondent company and also doing business under the unincorporated trade name and style of Leavitt Brokerage Company; respondent Sikes, acting individually and as trustee and vice-president of respondent company; respondent Nelson, acting individually, as secretary, treasurer and trustee of respondent company; and respondent Wilson, acting individually and as fiscal agent of respondent company and doing business under the unincorporated trade name and style of Texas National Trust Company; each of said respondents in their several capacities, as aforesaid, and cooperating with and aiding and abetting each other therein, have caused for more than one year last past, and still cause, the said securities of respondent company to be offered for sale and sold to the general public throughout the United States, upon mail orders, telegraphic and telephonic orders, and through salesmen, agents and brokers, and have caused and cause the certificates of said securities of respondent company when so sold to be issued and transported from the State of Texas, through and into other States of the United States and the District of Columbia to the purchasers thereof; and have caused, and cause, to be carried on, as aforesaid, the marketing of said securities of respondent company in direct, active competition with other persons, partnerships, corporations and associations similarly engaged in interstate commerce.

PAR. 3. Respondents, and each of them acting in their said several capacities, in the marketing of said securities of respondent company, as aforesaid, have for more than one year last past made use of, and are still using, advertisements published in newspapers of general circulation throughout the United States, and prospectuses, pamphlets, circulars, telegrams, messages, and other advertising matter (said newspaper advertisements, prospectuses, pamphlets, circulars, telegrams, messages, and other advertising matter are hereinafter referred to as advertising matter) which respondents, and each of them, and aiding, abetting and cooperating with each other therein, as aforesaid, cause to be transmitted by mail, telephone, telegraph, agents, salesmen and brokers, and otherwise, from the State of Texas to purchasers and prospective purchasers of said securities of respondent company, and the public, throughout the United States; and in and through said advertising matter offered for sale and sold, and still offer for sale and sell, the said securities of respondent company to said prospective purchasers, purchasers and the public, and as inducements to said purchasers, prospective purchasers and the public to purchase said securities, caused for more than one year last past, and still cause, to be made in and through said advertising matter, agents, salesmen and brokers, numerous false, misleading and deceptive statements and other representations

of and concerning the business, financing, management, operations, properties, earnings, and prospects of respondent company, and concerning the value of said securities of respondent company, all of which statements and other representations, and each of them, were calculated, have the capacity and tendency, to, and did, mislead and deceive the said purchasers, prospective purchasers and the public, and thereby induced large numbers of said purchasers to purchase said securities of respondent company. A number of said false, misleading and deceptive statements and other representations are statements and representations to the following effect:

That the respondent company is, and has been, on a dividend paying basis and has earned, and is earning, large profits;

That respondent company is a large, successful producing company;

That respondent company has paid, and does pay, monthly dividends of 2 per cent;

That the amount of dividends paid by respondent company averaged 24 per cent per annum;

That respondents guaranteed to the stockholders the payment of dividends of 2 per cent per month;

That respondent company's so-called well No. 1 is a tremendously large producer;

That the production from respondent company's so-called well No. 1 enables it to pay 2 per cent dividends monthly and also extra dividends in addition thereto;

That respondent company's well No. 2 is a large producer of high-grade crude oil;

That respondent company's well No. 3 is a large producer;

That the oil produced from said well No. 3 is brought forth under tremendous pressure of natural forces;

That respondent company's wells Nos. 1, 2, and 3 are all, and each of them, settled producers;

That the company has acquired valuable oil properties in the State of California;

That the said Texas National Trust Company is a financial institution of recognized standing in its community;

That the said Leavitt Brokerage Company and the Texas National Trust Company are each general underwriters and licensed brokers, that they are capable of giving, and that the advice given in aforesaid advertising matter is, sound, unbiased and expert advice to said prospective purchasers as to the value and desirability of said securities of respondent company as investments.

Whereas in truth and in fact respondent company has at no time been a large, successful producing company; that the funds distributed by respondent company as dividends were not dividends or funds properly applicable to the payment of dividends; that respondents have at no time been on a dividend paying basis, or earning large profits, and that its so-called dividends have not averaged 24 per cent per annum; that respondent company did not pay 2 per cent monthly dividends; that respondent company's interest in its so-called wells Nos. 1, 2, 3, and 4 is only a fractional part of the whole; that said wells have produced only small quantities of oil; that the production from said well No. 1, or from all of said wells has not been sufficient to enable respondent company to pay monthly dividends of 2 per cent or extra dividends in addition thereto; that said wells, or any of them, have never been settled producers, nor flowed by their own natural forces; that respondent company has at no time acquired or owned oil properties in the State of California; that said Texas National Trust Company is not, and has never been a financial institution of recognized standing in its community; that said Leavitt Brokerage Company and Texas National Trust Company are not, and have at no time been capable of giving expert advice as to oil investments; and that the advice and opinions given to said purchasers, prospective purchasers and the public in said advertising matter was biased, unsound, and not expert advice and opinions.

PAR. 4. In addition to the acts and things done as alleged in the foregoing paragraphs hereof, and in marketing the said securities of respondent company, as aforesaid, respondents, and each of them, acting in their several capacities, as aforesaid, and cooperating with and aiding and abetting each other therein, concealed and withheld at all times herein mentioned, and still so conceal and withhold, from aforesaid purchasers and prospective purchasers of said securities and the public throughout the United States, numerous unusual, material and essential facts and circumstances concerning the value of said securities, the business, financing, management, operations, holdings, earnings, prospects, etc., of respondent company, which concealing and withholding of said unusual, material and essential facts and circumstances were calculated and intended by respondents, and have the capacity and tendency to, and did, mislead and deceive said purchasers and prospective purchasers into the belief that said unusual, material and essential facts and circumstances, and each of them, did not and do not exist, and thereby

induced large numbers of aforesaid purchasers to purchase said securities of respondent company. A number of said unusual, material and essential facts and circumstances so concealed and withheld from said purchasers, prospective purchasers and the public, are the following; namely; that respondent company during, to wit, April, 1920, borrowed and paid $10,000 cash and obligated itself to pay $290,000 more within six months thereof for, and in consideration of, the leases on its holdings in Sub-Division Four of the so-called Ranger Oil Pool, Eastland County, Texas; that 1,000,000 shares of said securities of respondent company were issued by respondent company to respondent Wilson for, and in consideration of, leases assigned by respondent Wilson to respondent company; that the valuation at which respondent company's several properties were acquired and paid for were inflated, excessive and exorbitant; that respondent company received only 40 cents per share for the said securities sold to the public out of the 2,000,000 shares underwritten by respondent Wilson as hereinbefore set forth; that a number of said securities of respondent company sold by respondents, as aforesaid, was not treasury stock of respondent company, and that respondent company received no part of the proceeds from the sale of such non-treasury stock; that respondent company's interests in its so-called wells Nos. 1, 2, 3, and 4 were but small fractional parts of the whole.

PAR. 5. The above alleged practices, acts and things done by respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued a complaint against the respondents, Texas Atlantic Oil Company, G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt and W. Lincoln Wilson, and due service was had upon each and all of them except respondent W. Lincoln Wilson.

The respondents, with the exception of said W. Lincoln Wilson, filed answers and entered appearances by their attorneys, hearings were had before an Examiner of the Federal Trade Commission theretofore duly appointed and testimony introduced for and on behalf of the Commission and of the respondents. The evidence so

taken was reduced to writing and filed in the office of the Federal Trade Commission.

Thereupon, this proceeding came on for final hearing, and the Commission having heard argument of counsel, and having duly considered the record, and being now fully advised in the premises, makes this its findings of facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Texas Atlantic Oil Company was organized by one P. P. Myhand and respondents G. P. Edgell and R. J. Leavitt, on the 7th day of April, 1920, under a so-called declaration of trust, with a capitalization of three million shares of the par value of one dollar ($1.00) each. Its principal office and place of business was located at Fort Worth, in the State of Texas, which is also the residence of respondents G. P. Edgell, J. B. Sikes and V. C. Nelson. The present location of respondents R. J. Leavitt and W. Lincoln Wilson is unknown.

PAR. 2. Immediately after the organization of respondent Texas Atlantic Oil Company, it proceeded to borrow from the Farmers' and Merchants' Bank of Fort Worth, Texas, the sum of $10,000.00, and using such money as a first payment thereon, it entered into an agreement to purchase, at a price of $300,000.00, certain interests in oil wells belonging to the so-called Ranger Brooks Oil and Development Company, situated in the County of Eastland, State of Texas, and which had theretofore produced oil of the value of $80,557.41.

It was agreed by and between the said Ranger Brooks Oil and Development Company and respondent Texas Atlantic Oil Company that an assignment of interests in said wells would be placed in escrow until the balance of the purchase price, to-wit, $290,000.00, should be paid, whereupon such assignment would be delivered to respondent Texas Atlantic Oil Company.

It was further agreed that from and after April the 15th, 1920, receipts from the sale of oil produced by such wells, which were to remain in the possession of the said Ranger Brooks Oil and Development Company until payment of said purchase price, would be set aside in a separate account in the said Farmers' and Merchants' Bank of Fort Worth, Texas, to be paid to the Texas Atlantic Oil Company when full payment of the purchase price of the wells should be received. Thereupon the respondent, Texas Atlantic Oil Company entered into an agreement with the Texas National Trust Company, an unincorporated concern, which was in fact the trade name of

respondent W. Lincoln Wilson, under and by virtue of which it secured the privilege of selling 2,000,000 shares of the stock of the Texas Atlantic Oil Company, paying therefor to said respondent the sum of 40 cents per share. It also entered into an agreement with respondent W. Lincoln Wilson for the issuance to him of 1,000,000 shares of its capital stock in exchange for certain leases, none of which, however, was thereafter utilized or developed by the company or on its behalf. This proposed issue was called property stock by the respondents, and it was agreed by respondent W. Lincoln Wilson that in consideration of the services of one W. F. White, president of the Ranger Brooks Oil and Development Company, and respondents Edgell, Nelson and Sikes, in connection with the promotion of Texas Atlantic Oil Company, 750,000 shares of said 1,000,000 shares would be divided among them after he had sold to the public 400,000 shares of the treasury stock of respondent company.

It was further resolved at a meeting of the trustees of the respondent, Texas Atlantic Oil Company, then consisting of the said P. P. Myhand and respondents Leavitt and Edgell, in conjunction with respondent W. Lincoln Wilson operating as Texas National Trust Company, that after he had sold 1,000,000 shares of the treasury stock of said Texas Atlantic Oil Company there would also be sold, along with other treasury stock of the said company, an equal amount of their so-called property stock until 250,000 shares thereof had been placed.

After these various transaction, P. P. Myhand and respondent R. J. Leavitt, who had served as trustees of the company only for organization purposes, resigned, the latter to engage in cooperation with respondent W. Lincoln Wilson in the sale of Texas Atlantic Oil stock in pursuance of his agreements hereinbefore stated. They were succeeded by respondents J. B. Sikes, who was also secretary of the said Ranger Brooks Oil and Development Company, and V. C. Nelson, who assumed the position as a representative of the said W. F. White, President of said company.

PAR. 3. Immediately upon the conclusion of the preliminary arrangements described in Paragraph Two, the individual respondents so associated as aforesaid, and at all times in conjunction with each other, but acting directly through respondent W. Lincoln Wilson operating under his trade name of Texas National Trust Company, and respondent R. J. Leavitt, doing business as the Leavitt Brokerage Company, proceeded to offer for sale, and to sell the stock of the respondent Texas Atlantic Oil Company to the public, by circulating among purchasers and prospective purchasers of stocks and securities in the various other States and territories of

the United States, prospectuses, circulars, folders, and other advertising literature wherein were printed and set forth the following among other false and misleading statements and representations:

That certain oil-producing properties in Eastland County, Texas, were the properties of the Texas Atlantic Oil Company;

That certain pictures of derricks and storage tanks appearing in some of the prospectuses, folders, and other advertising matter of respondents represented derricks and tanks situated on oil-producing properties of Texas Atlantic Oil Company;

That a tremendous flow of oil night and day was going into Texas Atlantic Oil Company's tanks from which dividends were paid on the 25th of each month;

That the Texas Atlantic Oil Company was a large and producing oil company, on a dividend basis, paying dividends of 2 per cent monthly, an average of 24 per cent per year;

That the Texas Atlantic Oil Company's No. 1 well was producing enough oil to enable it to pay 2 per cent monthly dividends;

That dividend of 2 per cent monthly was guaranteed by and from the production of the Texas Atlantic Oil Company.

In truth and fact, the respondent Texas Atlantic Oil Company neglected and failed to exercise its option by payment of the purchase price, and never acquired any title to or ownership of the property in question or interest therein. It owned at no time in its history the oil-producing properties described in its advertisements. There was no flow of oil night and day into its tanks as represented to the public, for the reason that the Texas Atlantic Oil Company had no wells, produced no oil, and owned no tanks. The production upon which it asserted its ability to pay dividends was entirely the production of the Ranger Brooks Oil and Development Company. The money distributed among its stockholders as dividends consisted of money advanced by the Ranger Brooks Oil and Development Company from the production of its wells, for the payment of fictitious dividends by the Texas Atlantic Oil Company in order to induce and augment the sale of its stock. During the entire period when respondents were engaged in an intensive campaign to sell the stock of respondent company, it was insolvent, burdened with great indebtedness, and entirely without income of any kind except from the sale of its stock.

PAR. 4. The respondents and each of them, acting in conjunction with each other, by means of the false representations and statements set forth in Paragraph Three hereof, each and all of which had the capacity and tendency to mislead and deceive, did in fact mislead

and deceive the public, or that portion thereof which purchased stock in the Texas Atlantic Oil Company, and sold to it 141,000 shares for the sum of $1.00 per share in direct and active competition with other persons, partnerships, corporations, and associations similarly engaged in the sale or distribution of stocks or securities in interstate commerce. The respondent Texas Atlantic Oil Company, however, received from the sale of such stock no more than the sum of $37,276.05. The certificates of the stock sold as aforesaid were issued by the respondent company at the instance of and in cooperation with the individual respondents, and transported from the State of Texas to the purchasers thereof residing in the various other States and territories of the United States.

CONCLUSION.

That the practices of the respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by the Examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes:"

It is now ordered, That the respondent Texas Atlantic Oil Company, and the respondents, G. P. Edgell, J. B. Sikes, V. C. Nelson and R. J. Leavitt, individually and as officers, shareholders or agents of the respondent Texas Atlantic Oil Company, and as officers, shareholders or agents of any other corporation, association or partnership, their trustees and agents, do cease and desist from directly or indirectly;

Publishing, circulating or distributing, or causing to be published, circulated or distributed, any newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of stock or securities, wherein is printed or set forth any

false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospect of any corporation, association or partnership.

It is further ordered, That the respondents, Texas Atlantic Oil Company, G. P. Edgell, J. B. Sikes, V. C. Nelson and R. J. Leavitt, within forty (40) days from the date of the service of this order, file with the Commission a report, setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth; and that the proceeding be dismissed without prejudice as to respondent W. Lincoln Wilson.

FEDERAL TRADE COMMISSION

v.

A. MORRISON AND L. MORRISON, PARTNERS, TRADING AS MORRISON FOUNTAIN PEN COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1002—February 8, 1924.

SYLLABUS.

Where a firm engaged in the manufacture and sale of fountain pens, labeled pens, which usually retailed at two dollars each, and which were sold by them at $12 a dozen to jobbers and were resold by said jobbers to retailers at from $15 to $18 a dozen, "* * * 14K gold mounted self-filling, $10," with the effect of enabling retailers to defraud the purchasing public by representing said article as being of high grade and reasonably worth said exaggerated and fictitious prices, and of misleading and deceiving said public by inducing the purchase of said articles in the erroneous belief that said pretended prices were their usual prices, and with the intent so to do:

Held, That such mislabeling, or misrepresentation of price, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Joseph Strauss of New York City, for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that A. Morrison and L. Morrison, partners, trading as the Morrison Fountain Pen Co., have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, A. Morrison and L. Morrison are, and at the times hereinafter mentioned were, partners, trading under the name and style of Morrison Fountain Pen Co., and having their office and usual place of business in the city of New York, State of New York. They are engaged in the business of manufacturing fountain pens and pencils and the sale thereof to jobbers and retailers throughout the United States, and causing such articles so manufactured and sold by them to be transported to the purchasers thereof from their said place of business in the State of

New York through and into various states of the United States, in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. In the course and conduct of their business as described in paragraph 1 herein, respondents sell, and for more than one year last past have sold, pencils and fountain pens manufactured by them, upon which they place labels conspicuously displaying excessive proposed resale prices which prices are not the real or actual retail prices at which such articles are resold, or are intended by the respondents, or their vendees, to be resold to the purchasing public. Said prices marked upon the articles as aforesaid are false and fictitious prices far in excess of the true values or usual retail selling prices of the articles and are placed upon such articles by the respondents with the intent and purpose of misleading and deceiving the purchasing public as to the true value and usual selling prices of said articles.

PAR. 3. The aforesaid resale prices placed on said articles enable retail dealers purchasing from respondents to defraud the purchasing public by representing that the said articles are of high grade and reasonably worth the false and fictitious prices marked thereon, and also have the tendency and capacity, in cases where the articles are offered for sale at the usual selling prices, which are substantially less than the marked prices, to mislead and deceive and do mislead and deceive the purchasing public by inducing buyers to purchase said articles in the erroneous belief that the marked prices are the usual selling prices.

PAR. 4. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents A. Morrison and L. Morrison, partners doing business under the firm name and style of Morrison Fountain Pen Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act, and the respond-

ents having entered their appearance and filed their answer herein, hearings were had and evidence introduced on behalf of the Commission and the respondents before Edward M. Averill, an Examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing on briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises makes this its Findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents A. Morrison and L. Morrison, are, and have been since the year 1918, partners doing business under the name and style of Morrison Fountain Pen Company, with their office and principal place of business in the City of New York, State of New York. They are, and have been engaged in the business of manufacturing fountain pens and pencils and selling same to jobbers and retailers thereof throughout the United States, and causing such articles so manufactured and sold by them to be transported to the purchasers thereof from their said place of business in the City of New York, through and into various States of the United States in direct competition with other persons, partnerships and corporations.

PAR. 2. The respondents in the course of their business described in paragraph 1, and for a period of two (2) years last past have manufactured and sold in interstate commerce a certain style or make of fountain pen upon which up to January 1, 1923, they placed a band or label as follows: "Morrisons' No. 33 1/40—14K gold mounted self-filling $10.00," and after January 1, 1923, the same label except that the figures "$6.50" were substituted in lieu of "$10.00."

PAR. 3. The respondents during the period of time mentioned in paragraph 2 sold the pens described in such paragraph in interstate commerce to jobbers at $144.00 a gross, and said pens were in turn sold by such jobbers to retailers at prices varying from $15.00 to $18.00 per dozen, and sold to the purchasing public usually at the price of $2.00 each, but occasionally the prices of $2.50 and $3.00 were obtained. The prices marked upon such pens by the respondents are false and fictitious prices far in excess of the usual retail selling prices, and were placed upon such articles by the respondents with the intent and purpose of misleading and deceiving the purchasing public as to the value and the usual selling prices of such pens.

PAR. 4. The aforesaid resale prices placed on said articles enable retail dealers to defraud the purchasing public by representing that the said articles are of high grade and reasonably worth the false and fictitious prices marked thereon, and also have the tendency and capacity to mislead and deceive and do mislead and deceive the purchasing public by inducing buyers to purchase said articles in the erroneous belief that the marked prices are the usual selling prices.

CONCLUSION

That the practices of the respondents under the conditions and circumstances set forth in the foregoing Findings, are unfair methods of competition in commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and evidence submitted, and the briefs and arguments of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, A. Morrison and L. Morrison do cease and desist from selling in interstate commerce fountain pens bearing upon them any band, label, or other mark indicating a false fictitious, exaggerated and misleading price, in excess of the price at which such pens are usually sold at retail.

It is further ordered, That the said respondents, A. Morrison and L. Morrison shall within thirty (30) days from the date of the service 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 of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

ALLIED GOLF COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5, OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1078—February 8, 1924.

SYLLABUS.

Where a corporation engaged in the purchase of golf balls made to its order and in the sale thereof at wholesale, sold such golf balls upon which it had caused the word "Official" to be stamped and which it had caused to be placed in wrappers and containers bearing the legend "OFFICIAL GOLF BALL This ball is standard and official as required by the United States Golf Association, the Royal & Ancient Club and other governing bodies", the fact being that said balls had never been designated nor adopted as official by the aforesaid authorities, nor by any other competent, authoritative governing body; with the capacity to mislead and deceive the public into believing that said balls had been officially adopted as above indicated for use in tournaments and contests and were to be preferred to others not so marked:

Held, That such misbranding and mislabeling, under the circumstances set forth, constituted an unfair method of competition.

Mr. Morgan J. Doyle for the Commission.

Mr. George A. Chritton of Dyrenforth, Lee, Chritton & Wiles of Chicago, Ill., for respondent.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Allied Golf Company, a corporation, and more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect, as follows:

PARAGRAPH 1. Allied Golf Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of purchasing

in wholesale quantities golf balls made to its order and specifications, from manufacturers, and in selling the same in wholesale and retail quantities in interstate commerce, throughout the United States, and causing its product when so sold to be transported from the State of Illinois, to purchasers located in other States of the United States, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said product sold by said respondent between and among the various States of the United States. In the course and conduct of its business, respondent was at all times hereinafter mentioned, and still is, in competition with other individuals, firms, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That said respondent, trading as aforesaid, in the course and conduct of its business, for more than one year last past has cut or stamped, or caused to be cut or stamped on its said product, the word "official" in connection with or as a part of its trade brand or label; that at all times hereinbefore mentioned said respondent has caused its said product to be placed in paper wrappers or containers on which said wrappers or containers is printed the following:

OFFICIAL GOLF BALL

This ball is standard and official as required by the U. S. G. A., the Royal & Ancient Club and other governing bodies.

That the word "official" as cut or stamped on said product, together with the aforesaid legend as printed on the paper wrappers or containers of said product, has the capacity and tendency to mislead and deceive the public and/or does mislead and deceive the public into the belief that the said product of respondent is designated by the United States Golf Association, the governing body in matters pertaining to golf in the United States, and the Royal and Ancient Club of St. Andrew's, Scotland, the governing body in matters pertaining to golf in the British Isles, as officially adopted for use in all tournaments or contests conducted by or under the auspices of the said United States Golf Association and the said Royal & Ancient Club of St. Andrew's, Scotland, or the various clubs constituting the subordinate units of said respective associations.

PAR. 3. That the word "official" when applied to a product, particularly when used in conjunction with or appertaining to a governing body, has been well-known and understood by the public for a long period of years, to designate that particular product as adopted, authorized or approved by said governing body; that the

said United States Golf Association and the said Royal & Ancient Club of St. Andrew's, Scotland, has not adopted, authorized, approved or designated the respondent's product as official or required the same to be used in tournaments or contests conducted by or under the auspices of the said United States Golf Association and the said Royal & Ancient Club of St. Andrew's, Scotland, or the various clubs constituting the subordinate units of said respective association.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Allied Golf Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent entered its appearance on the 28th day of November, 1923, and made answer in writing to said complaint and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts, and such order as it may deem proper to enter therein, without the introduction of testimony, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Allied Golf Company is a corporation, organized and doing business under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago, Illinois. Respondent has been and still is engaged in the business of purchasing in wholesale quantities, golf balls made to its order and specifications, from manufacturers, and in selling the same in wholesale quantities throughout the United States. Respondent causes its commodity, when so sold, to be transported from the State of Illi-

nois, to purchasers located in other States of the United States. In the course and conduct of its business, respondent was, and still is, in competition with other individuals, firms, partnerships and corporations likewise engaged in the purchase, sale and distribution of golf balls among the various States of the United States.

PAR. 2. Respondent, in the course and conduct of its said business, caused to be cut or stamped upon golf balls in which it deals, the word "Official" and has caused these golf balls to be placed in paper wrappers and containers, on which said wrappers and containers is printed the following:

OFFICIAL GOLF BALL

This ball is standard and official
as required by the United States Golf Association,
the Royal & Ancient Club and other governing bodies.

The word "Official" as cut or stamped on said golf balls and the said statement printed on the paper wrappers and containers of said golf balls, have the capacity and tendency to mislead and deceive the public into the belief that said golf balls, so sold by respondent, are official, and into the further belief that said balls are designated by the United States Golf Association and the Royal & Ancient Club, as officially adopted for use in all tournaments or contests conducted by, or under the auspices of, the said United States Golf Association and the Royal & Ancient Club, and are to be preferred to other golf balls not so marked.

PAR. 3. The golf balls sold by respondents have not been adopted as official by any competent authoritative governing body, nor have said golf balls been adopted, authorized, approved, designated as official, or required to be used in tournaments or contests conducted by or under the auspices of the United States Golf Association and the Royal and Ancient Club.

CONCLUSION.

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the

respondent, and an agreed statement of facts, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Allied Golf Company, a corporation organized and existing by and under the laws of the State of Illinois, its officers, agents and employees, do cease and desist from directly or indirectly marketing in commerce, among any of the States in the United States, golf balls, with the word "Official" imprinted or stamped upon such balls or upon the wrappers or containers in which such balls are wrapped or packed, unless and until such golf balls have been adopted as "Official" by some competent authority.

It is further ordered, That the respondent within sixty (60) days after date of the service upon it of a copy of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order of the Commission hereinbefore set forth.

Syllabus.

FEDERAL TRADE COMMISSION

v.

WHOLESALE TOBACCO AND CIGAR DEALERS ASSOCIATION OF PHILADELPHIA, PA., ET AL.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 886—February 16, 1924.

SYLLABUS.

Where an association composed of tobacco wholesalers, and the officers and members thereof;

(*a*) Agreed upon a schedule of fixed prices at which the members should thereafter resell the products dealt in by them to their dealer customers, and, in accordance with a system adopted by them and directed to the maintenance and enforcement of such prices;

(*b*) Undertook to maintain and maintained the same;

(*c*) Caused the fixing of such prices to appear as the formal action of the association by appropriate resolution;

(*d*) Notified all members of such actions;

(*e*) Sought by persuasion and intimidation to cause all dealers in the territory concerned to maintain such prices;

(*f*) Sought and secured the cooperation of a tobacco manufacturer, the products of which constituted a large portion of those dealt in by them and were so essential to a tobacco dealer that without them his business would be substantially crippled and he would be placed at a competitive disadvantage with others so supplied, in its aforesaid persuasion and intimidation, in the notifying of the trade by circular letters and otherwise that such manufacturer, the notifier, would refuse further to supply price cutters, and in the taking of such action by said manufacturer;

(*g*) Caused reports of price cutting to be reported to the aforesaid manufacturer for action as above set forth;

(*h*) Employed a special agent to spy on members and other dealers in order to ascertain and report instances of price cutting as above described; and

Where the aforesaid manufacturer, in pursuance of its general policy to assist groups of its jobbers who had fixed uniform resale prices on its products, by refusing shipments of its goods to price cutters,

(*i*) Assisted the aforesaid association and members in making effective their plan of resale price maintenance, as above set forth;

With the tendency and capacity to constrain all wholesalers doing business in the territory concerned uniformly to sell their products to their dealer customers at the prices fixed as above described and to hinder and suppress all competition in the wholesaling of such products in said territory and likewise to hinder and restrict competition between retailers therein; and with a tendency thereby to unduly hinder and obstruct the free and natural flow of commerce:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith and *Mr. E. B. Haas* for the Commission.

Mr. Joseph H. Taulane of Philadelphia, Pa., for respondent Wholesale Tobacco & Cigar Dealers Association of Philadelphia, and the officers, directors, and members thereof.

Mr. John Walsh and *Mr. L. A. Spiess* of Washington, D. C., and *Mr. Junius Parker* of New York City, for respondent American Tobacco Company.

Mr. H. H. Shelton of Washington, D. C., and *Mr. Charles Caldwell* of New York City, for respondent P. Lorillard Company.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Wholesale Tobacco & Cigar Dealers Association of Philadelphia, Pennsylvania, its Officers, Directors, Members and the various individuals, partnerships and corporations named in the caption hereof,[1] hereinafter referred to as Respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wholesale Tobacco & Cigar Dealers Association of Philadelphia, Pennsylvania, is a voluntary unincorporated association organized in the Year 1920 by and composed of various individuals, partnerships and corporations engaged in the business of selling at wholesale to wholesale and retail dealers cigars, cigarettes and other tobacco products in the State of Pennsylvania and in neighboring States, in some instances doing a retail business in said commodities in addition to said wholesale business, said Association is hereinafter called the Association. Respondents, Nelson F. Eberbach, Harvey D. Narrigan, James Murphy, Herman Krull and Paul L. Brogan were the original officers of the Association, holding the respective official positions set out in the caption hereof.[1] They and their successors have continuously been and are now such officers administering the affairs of the Association. Arthur Shipton, Frank Kuhn, William Cohen, Bennett Hollard, Frank Blatt, H. Stewart Moorhead, Philip Godeski, William D. Shepherd and Morris Hochman were the original Directors of the Association and together constituted the original Board of Directors. They and their successors have continuously been and still are the Directors and Board of Directors of the Association, controlling and directing its affairs.

[1] See recital on p. 262 et seq.

Group I.

The following-named respondents with their several principal places of business in the city of Philadelphia, State of Pennsylvania, were at all times hereinafter mentioned and still are engaged in selling one or more of the aforesaid tobacco products at wholesale to wholesale and retail dealers in several States of the United States. They cause said products when so sold to be transported from their respective places of business in said city of Philadelphia to said purchasers at various points in various States of the United States:

Nelson F. Eberbach, John S. Eberbach and Joseph H. Eberbach, partners doing business under the name and style of A. B. Cunningham & Company;

Dusel, Goodloe & Company, Incorporated, a corporation organized under the laws of the State of New Jersey;

Philip Godeski and Sidney G. Godeski, partners doing business under the name and style Franklin Tobacco Company;

Peter J. Murphy and John Murphy, partners doing business under the name and style Peter F. Murphy Company;

Charles A. Krull and Herman Krull, partners doing business under the name and style Charles A. Krull;

William D. Shepherd and John G. Shepherd, partners doing business under the name and style of S. Shepherd's Sons;

T. H. Hart and A. I. Mitchell, partners doing business under the name and style T. H. Hart & Company;

Yahn & McDonnell Company, Incorporated, a corporation organized under the laws of the State of Pennsylvania;

M. Blumenthal;

John Wagner and Joseph W. Wagner, partners doing business under the name and style of John Wagner & Sons;

Harvey D. Narrigan, an individual doing business under the trade name H. D. Narrigan & Company;

Victor Fermani;

Bennett Hollard;

B. Hochman;

M. J. Dalton Company, a corporation organized under the laws of the State of Pennsylvania;

Brucker & Boghien, Incorporated, a corporation organized under the laws of the State of Pennsylvania;

S. T. Banham and A. L. Banham, partners doing business under the name and style S. T. Banham & Brothers;

E. Cohen and William Cohen, partners doing business under the name and style E. Cohen & Sons.

Group II.

The following-named respondents with their several places of business in the city of Philadelphia, State of Pennsylvania, were at all times hereinafter mentioned and still are engaged in the business of selling one or more of aforesaid tobacco products at wholesale to wholesale and retail dealers wholly within the State of Pennsylvania:

Frank Kuhn, George Kuhn and John Kuhn, partners doing business under the name and style of F. Kuhn & Brothers;

Baum & Neely, Incorporated, a corporation organized under the laws of the State of Pennsylvania;

Anna E. Bechtold, an individual doing business under the trade name of James S. Bechtold;

Frank Blatt;

Arthur Shipton and Thomas F. Cooper, partners doing business under the name and style of Shipton & Payne Company;

H. S. Moorhead, an individual doing business under the trade name of Duncan & Moorhead;

Fred G. H. Woerner, an individual doing business under the trade name of Fred G. H. Woerner & Sons;

Group III.

The following-named respondents with their several principal places of business in the city of Camden, State of New Jersey, were at all times hereinafter mentioned and still are engaged in selling one or more of aforesaid tobacco products at wholesale to wholesale and retail dealers in several States of the United States. They cause said products when so sold to be transported from their several places of business in said city of Camden to said purchasers at points in various States of the United States:

F. Hartmann & Son, a corporation organized under the laws of the State of New Jersey;

John Murphy and James Murphy, partners doing business under the name and style Murphy Brothers.

All the foregoing respondents whose names are set out in Groups I, II, and III above were at all times hereinafter mentioned and still are Members of the Association and are hereinafter collectively referred to as the Members. In the absence of the acts and things done by them as more particularly hereinafter set out, they were and are naturally and normally in unrestricted competition with each other and with other dealers in aforesaid territory.

Respondent, American Tobacco Company is a corporation organized under the laws of the State of New Jersey, with its prin-

cipal office in the city of Jersey City in said State and with factories in several of the United States. It was at all times hereinafter mentioned and still is engaged in the manufacture of cigars, cigarettes and other tobacco products and the sale thereof to wholesale and retail dealers throughout the United States. It causes its products when so sold to be transported from the point of manufacture to said purchasers at points in other States of the United States. Amongst said purchasers are all the respondents set out in Groups I, II, and III above.

Respondent, P. Lorillard Company is a corporation organized under the laws of the State of New Jersey, with its principal office in the city of Jersey City, in said State and with factories in several of the United States. It was at all times hereinafter mentioned and still is engaged in the manufacture of cigars, cigarettes, and other tobacco products and the sale thereof to wholesale and retail dealers throughout the United States. It causes its products when so sold to be transported from the point of manufacture to said purchasers at points in other States of the United States. Amongst said purchasers are all the respondents set out in Groups I, II, and III above.

Said manufacturers at all times hereinafter mentioned were and still are in competition with each other and with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of tobacco products in interstate commerce except in so far as the same has been limited, prevented or suppressed by the acts and things done by them and the other respondents herein as more particularly hereinafter set out.

PAR. 2. At the time of the organization of the association, the prices at which said manufacturers sold their products were fixed as follows: Said manufacturers severally supplied the members with a schedule of prices denominated "list prices" which were the prices severally suggested by said manufacturers at which their products should be resold by the members to the retail trade. The prices at which said products were sold to the members were fixed by certain uniform discounts off said list in each instance, whereby the members paid to said manufacturers for said products said list prices minus said discounts. Wholesale and retail dealers in tobacco products throughout the United States, including respondent dealers set out in Groups I, II, and III above, then were and still are dependent upon respondent manufacturers for their supply of a large portion of the products in which they deal. The extent of this dependence is such that when any such dealer is unable to secure the products of respondent manufacturers or either of them

his business is substantially crippled, and he is placed at a competitive disadvantage with dealers supplied with said products. In the year 1920 the association and its members acting through the association and cooperating and conspiring with it, and with each other, agreed upon a schedule of fixed prices at which the members should thereafter resell to their dealer-customers the products dealt in by the members, including the products of respondent manufacturers, and having thus fixed said uniform resale prices, adopted a system for the maintenance and enforcement of said resale prices by the members and by all other wholesale dealers in the trade who did business within the territory served by the members. Respondent manufacturers cooperated and conspired with the association and its members and participated in said price maintenance system as is more particularly hereinafter set out. In the course of aforesaid cooperative enforcement of said system, the members, and the association through its officers and directors, did, amongst others, and still do, the following acts and things:

(*a*) Undertook among themselves to maintain said resale prices, and did maintain same;

(*b*) Caused the fixation of said resale prices to appear as the formal action of the association by an appropriate resolution in that behalf;

(*c*) Caused the association to notify all members of said action;

(*d*) Sought by persuasion and intimidation to cause all dealers in the territory above referred to including those members of the association who discontinued the maintenance of said resale prices in violation of their aforesaid undertakings so to do, to maintain said resale prices;

(*e*) Sought and secured the cooperation of respondent manufacturers in such persuasion and intimidation, which each said manufacturer rendered by notifying the trade in aforesaid territory, by circular letters and otherwise, that the notifier would refuse to furnish further supplies of his products to any wholesale dealer who failed to resell such products at the prices fixed in aforesaid schedule, or implying the same in veiled language;

(*f*) Caused reports of the names of said dealers who failed to maintain said resale prices to be reported by the members and their salesmen, either directly to the association, or through the respective members in each instance to the association, and upon receiving such reports, in turn, reported the names of such offending dealers to respondent manufacturers requesting

the assistance and cooperation of respondent manufacturers in the enforcement of said system by having said manufacturers refuse to further supply said offending dealers with any of their products;

(*g*) As a result of reporting said names to the respondent manufacturers and requesting their cooperation, as set out in specification (f) hereof, secured the cooperation and assistance of said manufacturers in that behalf and each said manufacturer upon receiving such information proceeded to investigate said instances of price cutting, and upon finding that the offending dealer was cutting prices, and refusing and failing to maintain aforesaid resale prices, refused to furnish said offending dealer with further supplies of its, the manufacturer's products, until the offender gave such promises and assurances of maintaining said resale prices in the future as were satisfactory to said manufacturers and the association in that regard;

(*h*) Employed special agents to spy upon the members and other dealers in the aforesaid territory in order to ascertain if any of them were or was failing to maintain said resale prices, and upon discovering that a member or a dealer was so doing, to report the name of such offender to the association. Upon receiving such report, sought and secured the cooperation of the manufacturers with regard to said offenders in like manner and with like results as set out in specifications (f) and (g).

PAR. 3. The aforesaid acts and things done by respondents and each of them had and still have the tendency and capacity to constrain all wholesale dealers doing business in the territory above mentioned to uniformly sell the aforesaid products to their dealer-customers at the prices fixed by the association and its members as hereinbefore set out, and hence to hinder and suppress all competition in the wholesaling of said products in said territory, particularly among the members of the association and further to hinder and restrict competition between all retail dealers in said territory. Respondents' said practices thus tended and still tend to unduly hinder and obstruct the free and natural flow of commerce in the channels of interstate commerce.

PAR. 4. The above acts and things done by respondents and by each of them constitute unfair methods of competition in commerce, within the intent and meaning of section 5 of an act of Congress, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, defining its powers and duties and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, the Wholesale Tobacco & Cigar Dealers Association of Philadelphia, Pennsylvania, its Officers, directors and members as follows: Nelson F. Eberbach, President, Harvey D. Narrigan and James Murphy, Vice Presidents, Herman J. Krull, Treasurer, Paul L. Brogan, Secretary, respectively, Arthur Shipton, Frank Kuhn, William Cohen, Bennett Hollard, Frank Blatt, H. Stewart Moorhead, Philip Godeski, William D. Shepherd and Morris Hochman, its directors, and the following members: Nelson F. Eberbach, John S. Eberbach and Joseph H. Eberbach, partners doing business under the name and style A. B. Cunningham & Company; Dusel, Goodloe & Company, Incorporated, a corporation, Philip Godeski and Sidney G. Godeski, partners doing business under the name and style Franklin Tobacco Company, Frank Kuhn, George Kuhn and John Kuhn, partners doing business under the name and style F. Kuhn & Brother, Peter J. Murphy and John Murphy, partners doing business under the name and style Peter J. Murphy Company, Charles A. Krull and Herman Krull, partners doing business under the name and style Charles A. Krull, Baum & Neely, Incorporated, a corporation, William F. Shepherd and John G. Shepherd, partners doing business under the name and style S. Shepherd's Sons, T. H. Hart and A. I. Mitchell, partners doing business under the name and style T. H. Hart & Company, F. Hartmann & Son, a corporation, Yahn & McDonnell Company, a corporation, M. Blumenthal, John Wagner and Joseph W. Wagner, partners doing business under the name and style of John Wagner & Sons, Harvey D. Narrigan, an individual doing business under the trade name H. D. Narrigan & Company, Victor Fermani, Anna E. Bechtold, an individual doing business under the trade name James S. Bechtold, Frank Blatt, Arthur Shipton and Thomas F. Cooper, partners doing business under the name and style Shipton & Payne Company, H. S. Moorhead, an individual doing business under the trade name Duncan & Moorhead, Bennett Hollard, P. Hochman, M. J. Dalton Company, a corporation, Brucker & Boghien, Incorporated, a corporation, Fred G. H. Woerner, an individual doing business under the trade name Fred G. H. Woerner & Sons, S. T. Banham and A. L. Banham, partners doing business under the name and style S. T. Banham & Brothers, E. Cohen and William Cohen, partners

doing business under the name and style E. Cohen & Sons, John Murphy and James Murphy, partners doing business under the name and style Murphy Brothers, American Tobacco Company, a corporation, and P. Lorillard Company, a corporation, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents John Wagner and Joseph W. Wagner, trading as John Wagner & Sons, filed their joint answer denying the use of the methods of competition charged in the complaint; respondent M. J. Dalton Company filed its answer averring that for at least four months prior to the service of said complaint the Wholesale Tobacco & Cigar Dealers Association of Philadelphia had been practically abandoned and that from that time to the filing of said answer there had been no associated action, agreement, resolution, or understanding between said Association and the officers and among members thereof, or any of them in connection with the business of buying and selling cigars, cigarettes and other tobacco products; excepting Yahn & McDonnell Company, Baum & Neely, Inc., John Murphy and James Murphy, partners doing business under the name and style of Murphy Brothers (none of whom filed answers), all the other respondent members, officers and directors of the Wholesale Tobacco & Cigar Dealers Association of Philadelphia and the said Wholesale Tobacco & Cigar Dealers Association of Philadelphia, filed their joint answer averring that for at least four months prior to the filing of the complaint the Wholesale Tobacco & Cigar Dealers Association of Philadelphia had been practically abandoned and that since that time to the filing of said joint answer there had been no associated action, agreement, resolution, or understanding between said Association and the officers and members thereof, or among the members thereof, or any of them in connection with the business of buying and selling cigars, cigarettes and other tobacco products, respondents American Tobacco Company and P. Lorillard Company filed their separate answers denying the use of the methods of competition charged in the complaint.

Thereupon hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents before George McCorkle, Esq., an examiner of the Federal Trade Commission theretofore duly appointed and thereupon this proceeding came on for final hearing and the Commission having heard argument of counsel and having duly considered the record (the testimony having been reduced to writing and filed in the office of said Commission) and being now fully advised in the premises, makes this its findings as to the facts and

conclusion (except that the proceeding having been dismissed as to the P. Lorillard Company, the Federal Trade Commission does not make any findings as to the facts as against P. Lorillard Company):

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Wholesale Tobacco & Cigar Dealers Association of Philadelphia, Pennsylvania, was a voluntary, unincorporated Association organized in the year 1920 and existing until at least June 9, 1922. It was composed of various individuals, partnerships and corporations engaged in the business of selling tobacco and tobacco products at wholesale to wholesale and retail dealers in the State of Pennsylvania and in the neighboring States, and, in some instances, doing a retail business in said commodities in addition to said wholesale business. Said association will be hereinafter referred to as the association.

The original officers of the association elected on September 2, 1920, were the following respondents: Nelson F. Eberbach, President, Harvey D. Narrigan, Vice President, James Murphy, Vice President, Herman J. Krull, Treasurer, Paul L. Brogan, Secretary, and Arthur Shipton, Frank Kuhn, William Cohen, Bennett Hollard, Frank Blatt, H. Stewart Moorhead, Philip Godeski, William D. Shepherd, and M. Hochman, Directors. Such respondents remained and continued as such officers of the association from September 2, 1920, until at least January 6, 1922, except that respondent William Fink, on June 6, 1921, was elected Second Vice President in place of respondent James Murphy, and said respondent William Fink continued as such Vice President from June 6, 1921, until at least January 6, 1922.

At a meeting of the association held September 2, 1920, the following committees were appointed, viz.,

Executive Committee: Respondents H. Stewart Moorhead, chairman, Frank Kuhn, John Murphy, Philadelphia, Philip Godeski, and William Cohen;

Finance Committee: Respondents M. Hochman, chairman, L. Fink, and James Bechtold;

Membership Committee: Respondents Arthur Shipton, chairman, F. Hartmann, and Myer Blumenthal.

These respondents continued as members, respectively, of the executive committee, finance committee and membership committee until at least January 6, 1922.

The membership of the association comprised all of the wholesale tobacco and cigarette dealers in Philadelphia and Camden, N. J., except Charles Seider and Fringes Sons.

The following named respondents with their several principal places of business in the city of Philadelphia, State of Pennsylvania, were at all times hereinafter mentioned and still are engaged in selling cigarettes and other tobacco products at wholesale to wholesale and retail dealers in the several States of the United States. They caused said products when so sold to be transported from their respective places of business in the said city of Philadelphia to purchasers thereof in the various States of the United States:

(*a*) Nelson F. Eberbach, John S. Eberbach and Joseph H. Eberbach, partners doing business under the name and style of A. B. Cunningham & Company; Dusel, Goodloe & Company, Incorporated, a corporation organized under the laws of the State of New Jersey; Philip Godeski and Sidney G. Godeski, partners doing business under the name and style Franklin Tobacco Company; Peter J. Murphy and John Murphy, partners doing business under the name and style Peter F. Murphy Company; Charles A. Krull and Herman Krull, partners doing business under the name and style Charles A. Krull; William D. Shepherd and John G. Shepherd, partners doing business under the name and style of S. Shepherd's Sons; T. H. Hart and A. I. Mitchell, partners doing business under the name and style T. H. Hart & Company; Yahn & McDonnell Company, Incorporated, a corporation organized under the laws of the State of Pennsylvania; M. Blumenthal; John Wagner and Joseph W. Wagner, partners doing business under the name and style of John Wagner & Sons; Harvey D. Narrigan, an individual doing business under the trade name H. D. Narrigan & Company; Victor Fermani; Bennett Hollard; P. Hochman; M. J. Dalton Company, a corporation organized under the laws of the State of Pennsylvania; Brucker & Boghien, Incorporated, a corporation organized under the laws of the State of Pennsylvania; S. T. Banham and A. L. Banham, partners doing business under the name and style S. T. Banham & Brothers; E. Cohen and William Cohen, partners doing business under the name and style E. Cohen & Sons.

The following named respondents with their several places of business in the city of Philadelphia, State of Pennsylvania, were at all times hereinafter mentioned and still are engaged in the business of selling cigarettes and other tobacco products at wholesale to wholesale and retail dealers wholly within the state of Pennsylvania:

(*b*) Frank Kuhn, George Kuhn and John Kuhn, partners doing business under the name and style of F. Kuhn & Brothers; Baum & Neely, Incorporated, a corporation organized under the laws of the State of Pennsylvania; Anna E. Bechtold, an individual doing

business under the trade name James S. Bechtold; Frank Blatt; Arthur Shipton and Thomas F. Cooper, partners doing business under the name and style Shipton & Payne Company; H. S. Moorhead, an individual doing business under the trade name of Duncan & Moorhead; Fred G. H. Woerner, an individual doing business under the trade name Fred G. H. Woerner & Sons.

The following named respondents with their several principal places of business in the city of Camden, State of New Jersey, were at all times hereinafter mentioned and still are engaged in the business of selling cigarettes and other tobacco products at wholesale to wholesale and retail dealers in the several States of the United States, particularly in Camden, N. J., and Philadelphia, Pennsylvania. They caused, and at all times hereinafter mentioned caused, such cigarettes and tobacco products, when so sold by them, to be transported from their respective places of business in the city of Camden, N. J., to purchasers in various states of the United States, particularly in the states of New Jersey and Pennsylvania:

(*c*) F. Hartmann & Son, a corporation organized under the laws of the state of New Jersey; John Murphy and James Murphy, partners doing business under the name and style Murphy Brothers.

All of the foregoing respondents whose names are set out in subparagraphs (*a*), (*b*) and (*c*) were at all times during the existence of the association, members thereof and are hereinafter collectively referred to as the members, excepting that respondents John Murphy and James Murphy, trading as Murphy Brothers, were expelled from the Association in April, 1921, and John Wagner and Joseph W. Wagner, partners trading as John Wagner & Sons, Yahn & McDonnell Company and Baum & Neely, Inc., withdrew from the Association some time after June, 1921. During the period of the existence of the Association the members were naturally and normally in unrestricted competition with each other and with other dealers in the territory in which they sold, excepting insofar as such competition was limited, prevented and suppressed by the acts and things done by them as more particularly hereinafter set out.

Respondent, American Tobacco Company, is a corporation organized, existing and doing business under the laws of the State of New Jersey with its principal office in Jersey City in said state and with factories in several states of the United States. It was at all times hereinafter mentioned and still is engaged in the manufacture of cigarettes and other tobacco products and in the sale thereof to wholesale dealers throughout the United States. It caused, during the period hereinafter mentioned, and still causes, its products,

when so sold, to be transported from the point of manufacture to purchasers at points in other states of the United States. Among said purchasers were all of the respondents named in subparagraphs (*a*), (*b*) and (*c*). The said American Tobacco Company was at all times hereinafter mentioned and still is in competition with individuals, partnerships and other corporations similarly engaged in the manufacture and sale of tobacco products in interstate commerce.

PAR. 2. During the period of the existence of the association the prices at which the respondent American Tobacco Company sold its products were fixed as follows: It supplied each of the members with a schedule of prices, denominated List Prices, which were the prices suggested by said American Tobacco Company at which its products should be re-sold by the members to other wholesalers and to the retail trade. The prices at which such products were sold to the members were fixed by certain uniform discounts off said list in each instance, whereby the members paid the manufacturers for said products said list prices minus said discounts. Wholesale and retail dealers in tobacco products throughout the United States, including the members, were, during the existence of the association, and still are, dependent upon the American Tobacco Company for their supply of the American Tobacco Company's products, which constitute a large portion of the tobacco products dealt in by such wholesale and retail dealers. The extent of this dependence is such that when any dealer is unable to secure the products of the American Tobacco Company, his business is substantially crippled and he is placed at a competitive disadvantage with dealers supplied with said products.

On September 16, 1920, the association and its members, acting through the association and cooperating with it and with each other, agreed upon a schedule of fixed prices at which the members should thereafter resell to their dealer-customers the tobacco products dealt in by the members, including the products of the American Tobacco Company and, having thus fixed such uniform resale prices, adopted a system for the maintenance and enforcement of said resale prices by the Members and by all of the wholesale dealers in the trade who did business in the territory served by the members. In the course of said cooperative enforcement of said system the members and the association, through its officers and directors, did, among other things, during the period from September 16, 1920, until the end of 1921, the following acts and things:

(*a*) Undertook among themselves to maintain said resale prices and did maintain same;

(*b*) Caused the fixation of said resale prices to appear as the formal action of the association by an appropriate resolution in that behalf;

(*c*) Caused the association to notify all members of said acts;

(*d*) Sought by persuasion and intimidation to cause all dealers who sold in the general selling territory of the members, including those members who discontinued the maintenance of said resale prices in violation of their aforesaid undertaking so to do, to maintain said resale prices;

(*e*) Sought and secured the cooperation of the American Tobacco Company in such persuasion and intimidation, which said American Tobacco Company rendered by notifying its trade in the territory of the members, by circular letters and otherwise that the notifier would refuse to furnish further supplies of its products to any wholesale dealer who failed to resell such products at the prices fixed in the aforesaid letter, or implying the same in veiled language;

(*f*) Caused reports of the names of said dealers who failed to maintain said resale prices to be reported by the members and their salesmen, either directly to the association, or through the respective members in each instance to the association, and upon receiving such reports, in turn, reported the names of such offending dealers to the American Tobacco Company, requesting its assistance in the enforcement of said system by having said American Tobacco Company refuse to further supply said offending dealers with any of its products;

(*g*) As a result of reporting said names to the American Tobacco Company and requesting its cooperation as set out in specification (*f*) hereof, secured the cooperation and assistance of the American Tobacco Company in that behalf and said American Tobacco Company, upon receiving such information, proceeded to investigate said instances of price-cutting and upon finding that the offending dealer was cutting prices and refusing and failing to maintain the said resale prices, refused to furnish said offending dealer with further supplies of its products;

(*h*) Employed a special agent to spy upon the members and other dealers in the aforesaid territory in order to ascertain if any of them were failing to maintain said resale prices, and upon discovering that a member or dealer was so doing, to report the name of such offender to the Association, which, upon receiving such reports, sought and secured the cooperation of the American Tobacco Company with regard to such offenders in like manner and with like results as set out in specifications (*f*) and (*g*).

PAR. 3. During the period aforesaid in which the association adopted and maintained uniform resale prices for said American Tobacco Company's products in the manner and by the means set out in paragraph 2 hereof, it was the general policy of said American Tobacco Company to assist groups of its jobbers who would fix or who had fixed by cooperation among themselves uniform resale prices on its products, by refusing shipments of its goods to such of its jobbers who had resold or who would re-sell at prices lower than those fixed by such jobbers by cooperation among one another. Such was the policy of said American Tobacco Company with respect to respondent association and its members. The representatives of said American Tobacco Company in the territory in which the members resold its products were instructed by their superiors to carry out such policy in Philadelphia and vicinity and because of such instructions such representatives carried out such policy.

Said American Tobacco Company knew of the price agreements made by the association and its members as described in paragraph 2 hereof and agreed with the said association and its members to help them maintain the price agreements described in paragraph 2 hereof.

Charles Seider, one of said American Tobacco Company's distributors in Philadelphia and a competitor of the members, having declined an invitation of the president and treasurer of the respondent association to join its membership, was urged by the division manager of the American Tobacco Company in charge of its Philadelphia territory, to join the association. Said division manager requested said Seider to join the association and not to sell at prices below those fixed by it and its members, but to comply with the uniform prices put into effect by the members and by the association as described in paragraph 2 hereof. Said Seider refused to join the association, or to abide by its prices, and the said American Tobacco Company, after investigating a complaint made to it by the association and its members that the said Seider was reselling its products at prices less than those fixed by the association and its members, discontinued selling to said Seider in the period from April 20, 1921, to August 13, 1921, for the purpose of assisting the association and its members to maintain the price agreements as described in paragraph 2 hereof. After said Seider, following the suggestion made to him by the said division manager that if he joined respondent association, it would help him get the shipments that had been withheld from him by said American Tobacco Company, applied to the vice president of the respondent association for membership therein, the said American Tobacco Company reinstated him

as one of its customers and forwarded to him shipments that had been withheld in the period from April 20, 1921, to August 13, 1921.

Respondents John Murphy and James Murphy, partners doing business under the name and style Murphy Brothers, were expelled from the association in April, 1921, because they were accused by said association of reselling at prices less than those fixed by the association. The American Tobacco Company, after investigating complaints made to it by the association that said Murphy Brothers were reselling its products at prices less than those fixed by the association and its members, discontinued selling said Murphy Brothers in the period from August 29, 1921, to October 4, 1921, for the purpose of assisting the association and its members in maintaining the prices which had been fixed as set out in paragraph 2 hereof.

For the purpose of assisting the association and its members in maintaining the prices fixed by them as set out in paragraph 2 hereof, the American Tobacco Company in 1921, because of complaints made to it by the association and its members that respondents Fermani and Blumenthal were reselling its products at prices less than those fixed by the association and its members, withheld shipments of its products to said Fermani and Blumenthal while it was investigating the prices at which Fermani and Blumenthal were reselling its products.

PAR. 4. The aforesaid acts and things done by said respondents and each of them had the tendency and capacity to constrain all wholesale dealers doing business in the territory above mentioned to uniformly sell the aforesaid products to their dealer-customers at the prices fixed by the association and its members as hereinbefore set out and hence to hinder and suppress all competition in the wholesaling of said products in said territory, particularly among the members of the association and further to hinder and restrict competition between all retail dealers in said territory. Said respondents' practices thus tended to unduly hinder and obstruct the free and natural flow of commerce in the channels of interstate commerce.

CONCLUSION.

The practices of said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the Complaint of the Commission, the answers of respondents, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts and having reached its conclusion that the respondents hereinafter named have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties and for other purposes,"

Now, therefore, it is ordered, That the Wholesale Tobacco & Cigar Dealers Association of Philadelphia, Pennsylvania, and its Officers, Directors and Members as follows: Nelson F. Eberbach, President, Harvey D. Narrigan and James Murphy, Vice Presidents, Herman J. Krull, Treasurer, Paul L. Brogan, Secretary, respectively, Arthur Shipton, Frank Kuhn, William Cohen, Bennett Hollard, Frank Blatt, H. Stewart Moorhead, Philip Godeski, William D. Shepherd and Morris Hochman, its directors, and the following members: Nelson F. Eberbach, John S. Eberbach and Joseph H. Eberbach, partners doing business under the name and style A. B. Cunningham & Company; Dusel, Goodloe & Company, Incorporated, a corporation, Philip Godeski and Sidney G. Godeski, partners doing business under the name and style Franklin Tobacco Company, Frank Kuhn, George Kuhn and John Kuhn, partners doing business under the name and style F. Kuhn & Brother, Peter J. Murphy and John Murphy, partners doing business under the name and style Peter J. Murphy Company, Charles A. Krull and Herman Krull, partners doing business under the name and style Charles A. Krull, Baum & Neely, Incorporated, a corporation, William F. Shepherd and John G. Shepherd, partners doing business under the name and style S. Shepherd's Sons, T. H. Hart and A. I. Mitchell, partners doing business under the name and style T. H. Hart & Company, F. Hartmann & Son, a corporation, Yahn & McDonnell Company, a corporation, M. Blumenthal, John Wagner and Joseph W. Wagner, partners doing business under the name and style of John Wagner & Sons, Harvey D. Narrigan, an individual doing business under the trade name H. D. Narrigan & Company, Victor Fermani, Anna E. Bechtold, an individual doing business under the trade name James S. Bechtold, Frank Blatt, Arthur Shipton and Thomas F. Cooper, partners doing business under the name and style Shipton & Payne Company, H. S. Moorhead, an individual doing business under the trade name Duncan & Moor-

head, Bennett Hollard, P. Hochman, M. J. Dalton Company, a corporation, Brucker & Boghien, Incorporated, a corporation, Fred G. H. Woerner, an individual doing business under the trade name Fred G. H. Woerner & Sons, S. T. Banham and A. L. Banham, partners doing business under the name and style S. T. Banham & Brothers, E. Cohen and William Cohen, partners doing business under the name and style E. Cohen & Sons, John Murphy and James Murphy, partners doing business under the name and style Murphy Brothers, cease and desist from fixing, enforcing and maintaining and from enforcing and maintaining, by combination, agreement, or understanding among themselves, or with or among any of them, or with any other wholesaler of cigarettes or other tobacco products, resale prices for cigarettes or other tobacco products dealt in by such respondents, or any of them, or by any other wholesaler of cigarettes or other tobacco products;

And it is further ordered, That The American Tobacco Company cease and desist from assisting and from agreeing to assist any of its dealer-customers in maintaining and enforcing in the resale of cigarettes and other tobacco products manufactured by the said The American Tobacco Company, resale prices for such cigarettes and other tobacco products, fixed by any such dealer-customer by agreement, understanding or combination with any other dealer-customer of said The American Tobacco Company.

It is further ordered, That all of said respondents and each of them shall file with the Federal Trade Commission, within sixty (60) days from the date of the service upon them of this order, a report in writing stating the manner and form in which this order has been conformed to.

ORDER OF DISMISSAL AS TO P. LORILLARD COMPANY.

This proceeding having come on for hearing before the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and the testimony and evidence, and the Commission being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed as against respondent P. Lorillard Company.

Dissent by Commissioner Van Fleet.

I dissent in this case as to the order against the American Tobacco Company. The charge is that said company conspired with the Wholesale Dealers Association to maintain prices. The association was interested in maintaining the price that its members might

obtain more for their goods. The object of the American Company was not the same as the Association. The American Company sold its goods upon a ten per cent discount to the members of the association and its price was in no wise affected by the cutting of dealers. Of course this did not necessarily prevent the American Company from conspiring with the association but it is a fact to be considered whether there was such conspiracy. If dealers were cutting prices and demoralizing the trade which at the time charged had proceeded to the extent of ruin if continued the American Company had a legal right to refuse to continue business dealings with such concerns. It is evident that a concern can not stay in business if it sells at no profit as the evidence shows was the case here. The mere fact that the acts of the American Company were contemporaneous with those of the association is not determinative.

Of course conspiracy is often incapable of direct proof, but when resort is had to circumstantial evidence as in this case the proof should rise above the dignity of mere suspicion. Some of the evidence relied upon to sustain the order hardly ever rises to that dignity. Without summarizing the evidence to my mind it appears that the truth is that the American Company had nothing to do with the organization of nor conduct of the association and I know of no proof to the contrary. Also I believe its acts were taken independently of the association and no real proof to the contrary appears. The Commission dismissed the case against the Lorillard Company for lack of proof and I believe that eliminating evidence of acts of others for which the American Company was in no wise responsible and discarding mere conjecture there is not proof to warrant an order against the American Company.

FEDERAL TRADE COMMISSION

v.

ATLANTIC COMB WORKS.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 920—February 16, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic, commercially known as "celluloid," "pyralin" and by other names, and resembling ivory in color and general appearance; in disregard of the collective action of members of the industry condemning such use of the word, designated such articles in its advertising matter descriptive thereof as "Princess White Ivory Toilet Ware," with the capacity and tendency to mislead and deceive the purchasing public and induce the purchase of said products as and for articles made in whole or in part of ivory:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. William C. Reeves for the Commission.
Mr. Henry Woog of New York City, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Atlantic Comb Works, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with principal office and place of business in the City of New York, in said State. It is now and at all times hereinafter mentioned has been engaged in the manufacture and sale of toilet articles, in wholesale quantities, and in the conduct of its business causes said toilet articles so made and sold by it to be transported to the purchasers thereof, from the State of New York through and into other States of the United States. In the course of said business respondent continuously has been and is

now in competition with other persons, partnerships and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondent in the course of its business as described in paragraph 1 hereof, manufactures and sells toilet articles composed of nitrated cellulose or pyroxylin plastic, known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," and by other names; that some of the articles so manufactured and sold by respondent resemble ivory in color and general appearance, and respondent as a means of bringing such products to the attention of the purchasing public and enhancing the sale thereof distributes and has distributed advertising matter to its customers and to prospective customers and the trade, generally, in which advertising matter, such articles are described as "White Ivory," and the use of such advertising matter and the reproduction of same, by retail dealers through whom such articles have been resold to the consuming public, in the usual course of retail trade, was intended and calculated by respondent to mislead and deceive the consuming public as to the quality and value of such articles, and such advertising matter has the capacity and tendency to mislead and deceive the public and to induce a substantial portion of the consuming public to purchase said articles upon the erroneous belief that such articles are made of ivory in whole or in part.

PAR. 3. There are a considerable number of competitors of respondent, who manufacture toilet articles composed of the basic materials known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," etc., which materials resemble ivory in color and general appearance, and which competitors advertise and brand their products, sold in competition with those of respondent, as "Ivory Colored," "Imitation Ivory," or with words of like import, coupled with the name of the material of which the articles were composed.

PAR. 4. That on May 17, 1920, a conference was held by representatives of the manufacturers of the basic material known as pyroxylin plastic, and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C.; that at such conference a resolution was passed which condemned the use, as applied to articles made of pyroxylin plastic, of the word "Ivory" in any other than an adjective sense and then only when coupled with the name of the material, or some other proper qualifying term.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competi-

tors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent Atlantic Comb Works, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, testimony was taken and evidence received, both in support of the charges stated in the complaint and on behalf of the respondent, before an examiner of the Federal Trade Commission theretofore duly appointed, which testimony was reduced to writing and filed in the office of the Commission; whereupon the examiner made his report with proposed findings as to the facts, to portions of which findings the respondent excepted; whereupon the matter came on for final hearing before the Commission, and the Commission having duly considered the report of the trial examiner, the exceptions thereto and the entire record, directed that the matter be referred back for further proof in support of the charges stated in the complaint; and thereafter, a stipulation as to additional facts was made and entered into by and between respondent and the chief counsel for the Commission; and the Commission now having considered the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto, and the stipulation as to additional facts, and being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Atlantic Comb Works, is a corporation organized under the laws of the State of New York, with its principal office in the City of New York, in said State, and it is now, and was at the time of the issuance of the complaint herein, and prior thereto, engaged in the business of manufacturing and selling toilet articles to jobbers and department stores, and has caused articles so sold by it to be transported to the purchasers thereof from the State of New York through and into other States of the United States, in due course of commerce among the States,

and in the conduct of its said business has been and is in direct competition with other corporations, partnerships and individuals similarly engaged.

PAR. 2. That the respondent, in the course of its business as described in paragraph 1 hereof, has manufactured and sold toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," and by other names; that some of the articles so sold by respondent resembled ivory in color and general appearance, and to the purchasers of such articles respondent, in the year 1920 and prior thereto, and to a limited extent in the year 1921, has furnished advertising matter descriptive of such articles and containing pictorial representations of the same, in which advertising matter said articles were described as "Princess White Ivory Toilet Ware"; that some of the jobbers who received such advertising matter from respondent used same in bringing the articles purchased from respondent to the attention of prospective customers among retail dealers in toilet articles, for the purpose of increasing the sale of the articles by inducing such retail dealers to purchase same; that some of the proprietors of department stores to whom respondent sold such articles, caused such advertising matter to be distributed to the general public; that the description of said articles in said advertising matter as "Princess White Ivory Toilet Ware" had the capacity and tendency to mislead and deceive the purchasing public and induce numerous persons to purchase such articles upon the mistaken belief that such articles were made in whole or in part of ivory, or had some or all of the qualities of ivory.

PAR. 3. That since the issuance of the complaint herein, and for more than eighteen months prior thereto, other manufacturers of toilet articles made in whole or in part of pyroxylin plastic, and which resembled ivory in color and general appearance, sold such articles in commerce among the States, in competition with similar articles manufactured and sold by respondent; that during such period said manufacturers, competitors of respondent, in their advertising matter descriptive of the articles so sold by them, used the word "Ivory" only in an adjective sense, and then only when coupled with the name of the material of which such articles were made, or with some other qualifying term.

PAR. 4. That on May 17, 1920, a conference was held by representatives of the manufacturers of the basic material known as "Pyroxylin Plastic" and manufacturers of and dealers in various articles made from such basic material, which conference was called

by the Federal Trade Commission to meet at its offices in Washington, D. C.; that at such conference a resolution was passed which condemned the use, as applied to articles made from pyroxylin plastic, of the word "Ivory" in any other than an adjective sense, and then, only when coupled with the name of the material or some other qualifying term; that a representative of respondent was present at such conference and participated in its proceedings.

CONCLUSION.

The practices of the said respondent, under the circumstances and conditions set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence adduced, the report of the trial examiner and exceptions thereto, a stipulation as to additional facts and the briefs of counsel, and the Commission having made its report stating its findings as to the facts with its conclusion that respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Atlantic Comb Works, its officers, directors, agents and employees, cease and desist from making use of any form of advertising matter in which articles manufactured and sold by it and composed in whole or in part of nitrated cellulose or pyroxylin plastics, known commercially as "celluloid," "pyralin," and by other names, are described as "Ivory" or "White Ivory".

It is further ordered, That the respondent, Atlantic Comb Works, shall, within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set out.

FEDERAL TRADE COMMISSION

v.

VICTOR K. KISSAL, AND PAUL KOKALIS, COPARTNERS DOING BUSINESS UNDER THE NAME OF KISSAL & KOKALIS.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 980—February 16, 1924.

SYLLABUS.

Where an individual engaged in the sale of an orange beverage in different stores in the same city, all of which by virtue of their color, signs, arrangement thereof, etc., were characterized by a marked and distinctive exterior appearance, and had become well known to the people of said city and associated exclusively with his aforesaid places of business, and the beverage there sold and extensively advertised by him had come to be widely and favorably known among the consuming and purchasing public of such city; and thereafter a firm with full knowledge of the aforesaid facts, engaged in competition with such individual in the sale of orange beverage at a store which they caused in the painting of its front, and in the size, shape, coloration, general appearance, and in a significant portion of the lettering, of its signs, to simulate those of the aforesaid individual, with the effect of misleading and deceiving persons into entering their store as and for one of those of such individual and purchasing the beverage there sold as and for that sold by him:

Held, That such simulation of the place of business of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. Thomas H. Baker, jr., for the Commission.
Mr. James B. Green of Washington, D. C., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Victor K. Kissal, and Paul Kokalis, copartners, doing business, under the name of Kissal & Kokalis, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Victor K. Kissal and Paul Kokalis, have been for more than one year last past and still are copartners doing business under the name of Kissal & Kokalis and have their

principal place of business at 607 Fifteenth Street NW. in the District of Columbia, where respondents are engaged in the business of operating a beverage store as an adjunct to a restaurant operated by them on the same premises and known as "Century Lunch." The said beverage store has a separate entrance on Fifteenth Street and said respondents sell and dispense to the consuming and purchasing public in said store, various soft drinks including a so-called orange beverage prepared by them, and for more than one year last past have carried on said business in the District of Columbia in direct, active competition with other individuals, partnerships and corporations similarly engaged in said District.

PAR. 2. For a period of more than five years last past one Carrol H. Dikeman has been engaged, in the District of Columbia, in the business of operating a chain of retail stores known as Dikeman's Orange Beverage Stores, and at present located respectively at 431 Ninth Street NW., 719 Fourteenth Street NW., 1004 F Street NW., 3034 Fourteenth Street NW., and 931 Ninth Street NW., at which stores said Dikeman has, during said period, sold and now sells an orange beverage known as "Dikeman's Orange Beverage" to the consuming and purchasing public in direct active competition with other individuals, partnerships and corporations in the District of Columbia, including said respondents.

PAR. 3. All of said stores operated by said Dikeman, as aforesaid, have the same distinctive exterior appearance consisting of a white painted store front and on either side of the entrance distinctive signs bearing the legend "Dikeman's Delicious Orange Beverage, 5¢" in gilt lettering on a white background and bearing at the top the representation of a cluster of oranges, the whole being surrounded by a thin blue border. Said distinctive signs displayed by said Dikeman at his said stores, together with the general appearance of the store fronts have become well known to the people of the District of Columbia and have become associated exclusively with said Dikeman's said establishments, and the orange beverage sold and dispensed at said establishments by said Dikeman has acquired a wide and favorable reputation and good will among the consuming and purchasing public of said District, of which facts the respondents herein had full knowledge.

PAR. 4. After the establishment of said Dikeman's orange beverage stores, as aforesaid, respondents adopted for their said beverage store located at 607 Fifteenth Street NW., in the District of Columbia, adjoining their said restaurant, and having a separate entrance on Fifteenth Street, a store front which was and is substantially the

same as the store fronts of said Dikeman's orange beverage stores, being painted white, arranged in substantially the same manner as the stores of said Dikeman, and having installed at either side of the entrance signs on which the words "Delicious Orange Beverage, 5¢, Best in Town" were painted in gilt lettering on a white background, the whole being surrounded with a thin blue border and surmounted by a cluster of oranges, which signs simulated the said signs used by said Dikeman on his said stores, both in size, shape, coloration, general appearance and principal legend (omitting the name Dikeman), and said store front and signs, together with the general appearance and aspect of respondents' said store had and have the capacity and tendency to mislead and deceive, and have in fact misled and deceived a portion of the consuming and purchasing public of said District, into the mistaken belief that said respondents' said store was and is one of said Dikeman's chain of stores and that the beverage sold and dispensed by respondents therein was and is said Dikeman's orange beverage, all to the prejudice of the public and of said respondents' said competitors.

PAR. 5. The above acts and conduct of respondent, under the aforesaid circumstances, constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon respondents Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance by their attorney, and having filed their answer herewith, thereupon hearings were had before an examiner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondents, thereupon this proceeding came on for final hearing and the Commission being fully advised in the premises and upon consideration thereof makes this its report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents herein are now, and for several years immediately prior to this proceeding have been, engaged in the business of operating a lunch counter and retail shop at No. 609 Fifteenth Street NW., in the City of Washington and District of Columbia, where they sell, among other things, soft drinks to the consuming and purchasing public, and in the conduct of such business they are now, and for several years last past have been, in direct, active competition with other individuals, partnerships and corporation similarly engaged in the District of Columbia.

PAR. 2. Carroll H. Dikeman, for the past nine years, has been engaged in the City of Washington, District of Columbia, in the business of operating retail stores known as Dikeman's Orange Beverage Stores; that among such stores so operated by said Dikeman, were stores at Nos. 431 Ninth Street NW.; 719 Fourteenth Street NW.; 1004 F Street NW.; 1338 F Street NW.; 3034 Fourteenth Street NW.; and 655 Pennsylvania Avenue SE., in said City in said District. At his said store located at 431 Ninth Street NW., since 1916, and at his other said stores since they have been established, in direct and active competition with other individuals, partnerships and corporations in the District of Columbia, including said respondents, said Dikeman has sold and now sells to the consuming and purchasing public an orange beverage known as "Dikeman's Orange Beverage."

PAR. 3. Said stores operated by said Dikeman have all a similar distinctive exterior appearance, consisting of a white-painted store front with glass folding doors, and on either side of the entrance distinctive signs bearing the legend "Dikeman's Delicious Orange Beverage, 5¢" in gilt lettering on a white background, and bearing at the top a representation of a cluster of oranges with their twig and foliage, the entire sign being convex on the front surface and surrounded with a thin blue border.

(*a*) In the summer season the folding glass doors making up the store front of said Dikeman are folded back against either side, so as to give an unobstructed view of the interior of said store to passers-by on the sidewalk.

(*b*) In the interior of the said store of said Dikeman on Ninth Street there is placed a counter upon which the orange beverage above mentioned is served. This counter is white in color in its upper portion, and its top is of white marble, into which are set china bowls with silver tops, containing the orange beverage dispensed by the said Dikeman.

(*c*) On either side, at the door posts, are fastened the convex signs hereinabove mentioned. Each of said signs is about two feet wide and of such a length as to cover about two-thirds of the distance from the top of the door to the sill thereof, and is so placed that the top and bottom thereof, respectively, are about equal distances from the top of the door and the sill of the door, respectively.

(*d*) Signs similar to the signs described in subparagraph (c) of this paragraph have been in continuous use at the entrance of each of said stores of said Dikeman from the time each store was established. These signs were originally designed by said Dikeman and were made and placed in use by him. Said signs, for several years after they had been placed in use by said Dikeman, were unique and distinctive in appearance as compared with other signs in use in the District of Columbia.

(*e*) All the stores of said Dikeman hereinabove mentioned are similar in outward appearance and interior arrangement to the store at No. 431 Ninth Street NW., and each has signs similar in form, design, color, size and appearance to the signs described above.

PAR. 4. More than one year ago, and subsequent to the time that said Dikeman had established his orange beverage stores as hereinabove mentioned, respondents, who had been conducting a lunch counter at 609 Fifteenth Street NW., in the City of Washington, District of Columbia, added to their business the sale and dispensing of orange beverage.

(*a*) Respondents had the front of their said store at 609 Fifteenth Street NW. painted white. They installed within said store, at the front, a counter similar in form and appearance to that being used by said Dikeman in his store at 431 Ninth Street NW. Respondents' said counter was white, and into the top thereof was sunk containers similar to the containers used by said Dikeman, from which was dispensed the orange beverage. The end of said counter appeared in the opening in said store front. Immediately beyond a post at the side of said opening was the door of the shop, which in summer time stands open.

(*b*) On either side of said counter, upon posts which have been painted white, respondents have caused to be placed convex signs painted white, bearing upon them the words or lettering in gilt letters, "Delicious Orange Beverage 5¢ Best in Town" (the figure "5" is superimposed over the character "¢"). Said signs appear to be about two feet across the face and of such a length as to cover about three-fourths of the distance from the top of the doorway of said shop to the surface of the sidewalk, such signs being placed in such a manner that the bottom of said signs are a foot or more above

the surface of the sidewalk. At the top of said sign appears a cluster of oranges with their twig and foliage, and each side is surrounded by a pale green border. On these signs of respondents, as well as on the signs of said Dikeman, the cluster of oranges is surrounded by a border, but immediately below this orange cluster a decoration carried by the signs of said Dikeman is not reproduced by respondents. No name of a proprietor appears upon said signs of said respondents. The words and figures, "Orange Beverage 5¢" upon the signs of respondents are about alike in size, form, color and design, to those upon the signs of the said Dikeman.

(*c*) Prior to the time that respondent added the dispensing of orange beverage to their business at 609 Fifteenth Street NW. they had leased the front of their place of business to others who at times dispensed therein an orange beverage. At such times the front of said place of business, at least the portion of the front from which orange beverage was dispensed, was painted an orange color. After respondents had taken over such dispensing of orange beverage on their own accounts, they changed this color to white. This change made their sign more nearly simulate the said signs of Dikeman.

PAR. 5. Said Dikeman specializes in the sale in said stores hereinbefore mentioned, of an orange beverage. This business has increased within nine years from a business conducted in a single store, wherein he sold one to three gallons a day of orange beverage, to the sale of 1200 gallons per day of said beverage in seven stores in the District of Columbia, all conducted by said Dikeman, and in certain drug stores, where it is sold in the name of said Dikeman under an arrangement made by the owners of said stores with said Dikeman. Prior to the world war said Dikeman sold said beverage at 5 cents a glass. In war time he raised the price to 10 cents a glass, and at that time the signs of said Dikeman described herein bore the figures "10." Some time prior to a year ago, said Dikeman changed the price of his orange beverage back to 5 cents a glass, and had his signs so changed accordingly, and has since sold at that price, and said signs have since advertised the article at that price.

PAR. 6. Said distinctive signs displayed by said Dikeman at his said stores, together with the general appearance of his store fronts, have become well known to the people of the District of Columbia, and have become associated exclusively with his places of business. The beverage has acquired a wide and favorable reputation and good will among the consuming and purchasing public of said District, of all which facts respondent herein had full knowledge.

PAR. 7. He has advertised his beverage not only by the signs hereinabove mentioned, but also by advertisements in the newspapers

which have cost him many hundreds of dollars. In said advertisements Dikeman designates said beverage in words similar to those used upon his said signs.

PAR. 8. The aforesaid signs so placed by respondents at either side of the counter at the entrance of their said store at No. 609 Fifteenth Street, NW., simulate the said signs hereinabove mentioned as having been installed and used by said Dikeman at the entrance of his said stores, in size, shape, coloration, general appearance, and in a significant portion of the lettering thereon, and, taken in connection with the similarity in appearance between the store fronts of respondents and those of said Dikeman, they had and have the capacity and tendency to mislead and deceive a portion of the consuming and purchasing public of said District of Columbia into the mistaken belief that the respondents' said store is one of said Dikeman's stores, and that the beverage sold and dispensed by respondents herein was and is said Dikeman's orange beverage.

PAR. 9. Said signs so placed by respondents at either side of the counter in their said store at 609 Fifteenth Street, NW., simulate the said signs hereinabove mentioned as having been installed and used by the said Dikeman at his said stores, in size, shape, coloration, general appearance and in a significant portion of the lettering thereon, and taken in connection with the similarity in appearance of said store fronts of respondents and of said Dikeman, have a capacity and tendency to mislead and deceive, and have, in fact, by such deception, persuaded persons to enter the respondents' store and to make purchases of the respondents' beverage, under the mistaken belief that respondents' store was one of the said Dikeman's stores and that the beverage so purchased was Dikeman's "Orange Beverage."

CONCLUSION.

The above practices of said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and testimony heretofore taken, and the Commission

[1] Modified order issued as of May 12, 1924.

having made its findings as to the facts and its conclusion that respondents have violated the provisions of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondents, Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, their agents, representatives, servants and employees do cease and desist from simulating the signs, letterings, legend and store front in color, size, shape, design, and general appearance of the chain of stores of Carrol H. Dikeman.

It is further ordered, That respondents, Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, shall, within sixty (60) days after the service upon them of a copy 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

PROCESS ENGRAVING COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1017—February 16, 1924.

SYLLABUS.

Where a corporation engaged under a name which included the words "process engraving," in the printing and sale of business and social stationery through the use of a process which involved the application to type printing while still wet, of a chemical and heat, and resulted in a raised letter effect which closely simulated, to the nonexpert eye, the appearance produced by the more expensive process of genuine engraving, but was less durable; designated and sold its said stationery as "engraved," "process engraved," or "process engraving," and so described the same in its circulars and other advertising matter, and also as "engraved by our own process," with the capacity and tendency to mislead and deceive purchasers into believing said products to be the result of an impression from an engraved plate, commonly known to the public as an engraving, and with the effect of so doing:

Held, That such misleading designation of product, and such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. William C. Reeves for the Commission.

Mr. A. C. Linenthal of Chicago, Ill., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Process Engraving Company, more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Process Engraving Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State, and with a branch office located in the city of Milwaukee, in the State of Wis-

consin. Respondent is engaged in the business of printing and selling stationery for social and business purposes, including invitations, announcements, calling cards, letter heads, envelopes and similar products, and causes said stationery so produced, when sold, to be transported from its principal place of business in the State of Illinois to purchasers located in other States of the United States and from its branch office in the State of Wisconsin, to other States of the United States, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said product manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said business, respondent continuously has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. Respondent, in the course of its business as described in paragraph 1 hereof, prints invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery products which it designates and advertises as "engraved," although such process as used by respondent is not the process used in engraving and in no way includes the process of producing an impression on such stationery from engraved plates; that the product manufactured and sold in commerce by respondent is the result of the use of a chemical in powdered form which is applied to such type printing while the ink is still wet; this chemical adheres to the wet ink and in passing through a baking process the heat causes it to fuse and present a raised letter effect so as to resemble in appearance or simulate the impression made from engraved plates known as engraving.

PAR. 3. The words "engraved" or "engraving" particularly when applied to invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery, has been well-known and understood by the public for a long period of years to include only such products as result from the impression made from engraved plates in which has been stamped, cut or carved, letters, sketches, designs or inscriptions from which the reproduction is made; that the process used by respondent as set out in paragraph 2 hereof, so simulates engraving in appearance and finish that the same is calculated and has the capacity and tendency to mislead and deceive the purchasers into the erroneous belief that such product was the result of an impression made from an engraved plate commonly known to the public as engraving.

PAR. 4. That respondent, as a means of inducing the public to purchase invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery products, causes advertisements to be circulated and distributes circulars and other advertising matter to customers and prospective customers in various States of the United States, in which advertisements and advertising matter respondent describes and refers to its products as "engraved," and with such advertisements and advertising matter respondent encloses sample specimens of its product finished to resemble engraving in appearance and so printed as to simulate engraving in relief, and in which advertising matter respondent also refers to such samples as "engraved by our process" and as "process engraving"; that the words "process," "engraved" and "engraving," when so used by said respondent in conjunction each with the other and/or in connection with the corporate name of the respondent corporation, were and are intended by respondent, and are calculated and have the capacity and tendency to mislead and deceive the purchaser into the erroneous belief that such products were and are the result of an impression made from engraved plates commonly known to the public as engraving.

PAR. 5. There are a considerable number of competitors of respondent who are manufacturing engraved invitations, announcements, calling cards, letter heads, envelopes and similar social and business stationery, which said products are made from engraved plates in which have been stamped, cut or carved letters, sketches, designs or inscriptions from which the reproduction is made, which is known to the trade and consuming public as engraving, which said products are sold in competition with the products of respondent

PAR. 6. That the above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Process Engraving Company, charging it with the

use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer, the testimony of witnesses was taken and evidence received, both in support of the charges stated in the complaint and on behalf of respondent, before an examiner of the Federal Trade Commission theretofore duly appointed; whereupon, the trial examiner made his report upon the facts, to which counsel for the respondent filed exceptions.

Thereupon, the matter came on for final hearing before the Commission, upon the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto by respondent, briefs by counsel for the Commission and counsel for respondent; and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Process Engraving Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State, where for the past two or three years it has been engaged in the business of printing and selling stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes and similar products, and in selling, shipping and delivering said products from its principal place of business in Chicago to customers in the several States of the United States, and such products, in the course of such sale and delivery are transported from the respondent's principal place of business in the city of Chicago through and into other States of the United States to purchasers at their various places of residence. In the course and conduct of its said business as hereinabove set forth, respondent has been and is in competition with other persons, partnerships, firms and corporations engaged in the manufacture and sale of other and similar stationery products.

PAR. 2. Respondent, in the course of its business as described in paragraph 1 hereof, prints business cards, calling cards, envelopes, letterheads, invitations, announcements and similar stationery products, which it designates and sells as "engraved," "process engraved," or "process engraving," although the great bulk of the stationery sold by it is not engraved nor produced from engraved plates. Its entire printing business in the year 1922 amounted to about $150,000.

(*a*) Products so sold by respondent as "engraved," "process engraved," or "process engraving," are printed upon an ordinary press similar to the Gordon press, and while the ink is still wet there is applied thereto a powdered chemical substance, and the stationery is immediately thereafter heated so that the ink and powder will fuse and produce upon the surface of the paper raised letters closely simulating in appearance to the nonexpert eye effects produced by true engraving processes. That stationery so produced and sold by respondent in the year 1922 aggregated $140,000, or more than 93 per cent of its entire volume of business.

(*b*) Engraving, as a term designating an art or craft, began historically with wood engraving, which was known in Europe about 1423, metal engraving developed in Europe about 1452, at that time being confined to the decoration of articles produced by the goldsmith's art. Later came copper engraving, which was used commercially in America early in the eighteenth century. Then followed steel engraving, which was developed early in the nineteenth century. Engraving, as a term of art, designated cutting of the plates themselves, and by some authorities, the product or prints, as well. Such engraving in its earlier stages dealt largely with art work or the illustration of books, but later was devoted also to production of currency and stock and bond certificates, and, later still, to stationery for various purposes. With the development of photography, photographic processes of reproducing works of art, or producing illustrations for books and periodicals, largely took the place of line engraving and other hand work. This left as a field for such hand engraving, largely, the production of currency, securities and stationery, as above indicated.

(*c*) In producing engraved products for commercial purposes, characters or drawings are engraved upon copper or steel plates or dies in intaglio, the depression filled with ink, surplus ink removed from the surface of the plate, and the sheet taking the impression brought into contact with the plate under pressure in special presses in a process known as "plate printing." Thus has been produced the work known commercially as "engraving," using the term without qualification.

(*d*) Toward the middle of the last century, photography was applied to the etching of plates, usually of zinc or copper. Such plate production was called "photo-engraving," "photogravure," or, less frequently, "process engraving." This is the only sense in which "process engraving" had been used up to

very recent years (about five years) when real printing such as that produced by respondent has been chemically treated and developed and sold as "Process Engraving."

(*e*) Zinc plates made by photographic processes have entered into the production of a small percentage of the commercial stationery turned out by respondent in the course of its business as above described. Forty per cent of all respondent's products is produced from type without involving plates in any way. In the remaining sixty per cent the great bulk of the matter is produced from type, plates entering in a subsidiary way, as hereinafter described. Practically none of respondent's products are produced from plates alone, without type. The word "process" in the term "process engraving," as used by respondent, does not refer to the making of such plates, but only to the powdered chemical treatment of printing from type while the ink is still wet, and the baking process which produces raised letter effects simulating true engraging. Photographically prepared zinc plates, when entering production by respondent, ordinarily enter as a foundation for electrotype characters or cuts which are used in ordinary printing process on ordinary presses similar to the Gordon press. Respondent does not produce engraved stationery at its own place of business, and when it receives an order from a customer which it is obliged to fill with engraved stationery, it turns such order over to an establishment at which engraved stationery can be produced, and when the stationery covered by such order is completed, it is delivered to respondent, who, in turn, delivers such stationery to its customer. That the value of the stationery so sold by respondent constitutes less than five per cent of its total volume of business.

(*f*) Respondent also, at times, designates as "process embossing," its products hereinabove described. "Embossing," in its common meaning, signifies raising from the surface, and correctly designates the effect of this process. "Embossing" as technically known, however, in the printing arts, is produced by means of dies.

PAR. 3. In the effects produced, respondent's products, to the nonexpert observer, closely simulate true engraving. Designating such products as "engraved," "process engraved," or "process engraving," has the capacity and tendency to mislead and deceive purchasers of said products into the erroneous belief that such products are true engraving and are the result of an impression from an engraved plate commonly known to the public as an engraving.

There are exceptions. Where respondent has advertised and sold its product, and like products have been sold by others, some customers and prospective customers know it as "process engraving" and know that it is not a print from engraved steel or copper plates, and are not deceived, and express themselves as satisfied.

PAR. 4. In the effects produced, respondent's products, to the non-expert observer, closely simulate true engraving. Designating such products as "engraved," "process engraved," or "process engraving," has the capacity and tendency to mislead and deceive purchasers of said products, and actually does mislead and deceive purchasers and prospective purchasers into the erroneous belief that such products are true engraving and are the result of an impression from an engraved plate commonly known to the public as engraving.

PAR. 5. Respondent, as a means of selling about sixty per cent of the stationery produced by it, distributes in the several States of the United States, to customers and prospective customers, circulars and other advertising matter in connection with samples of its said products, in which respondent describes its said products as "engraved," "process engraved," "process engraving," or "engraved by our own process." Such products as hereinabove described are so printed and treated as to simulate closely in effects produced, true engraving. Such designation and advertisement of said samples as "engraved," "process engraved," "process engraving," or "engraved by our own process," especially taken in connection with the corporate name of respondent, has the capacity and tendency to mislead and deceive customers and prospective customers into the erroneous belief that such stationery had thereon impressions made from engraved plates and was the product of the engraver's art, as that term is understood by the public.

PAR. 6. Respondent sells in the several States, cards, letterheads, announcements, envelopes and similar stationery products, produced as hereinbefore described under the designation of "engraved," "process engraved," "process engraving," in active competition with producers of cards, letterheads, announcements and similar stationery products which have been made by processes of true engraving, and are, in fact, engraved products, as that term is understood by the public. In such competitive sales, the designation of respondent's said products as "engraved," "process engraved," or "process engraving," aids in selling respondent's products and gives respondent an advantage over competitors selling engraved products properly so designated which respondent could not enjoy if the words "engraved," or "engraving" were not used by respondent in designating its said products.

PAR. 7. Engraved products made by means of copper or steel plates have distinctly higher production costs than the products of respondent, as above described, which do not involve in their marking the engraving of steel or copper plates. Where the copy or matter to be reproduced is small, the difference in cost may not exceed 20% or 25%, but where a considerable amount of lettering is involved, the engraved matter may be double the cost of the chemically treated printing produced by respondent. Respondent's products, as hereinabove described and designated, do not resist temperature changes or handling so well as matter printed from engraved plates, nor so well as plain, flat printing, but its simulation of true engraving in effects produced, makes it more attractive to customers than plain, flat printing, and it has the advantage of being less expensive than true engraving. It has a legitimate field under a proper designation.

PAR. 8. The volume of business in engraved products in the United States, in the calendar year 1921, is estimated at $27,000,000. Engraved products are estimated to have cost the United States Government $11,000,000 in 1922. The production of the National currency, Government bonds, corporate stocks and bonds and other securities, by having impressions made thereon from inked, engraved steel plates, prevents or materially lessens the danger of having such currency and securities counterfeited.

CONCLUSION.

That the practice of the respondent, as set forth in the foregoing findings as to the facts are, in the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, the Trial Examiner's Report upon the facts and the exceptions thereto, and upon the briefs of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

Now, therefore, it is ordered, That the respondent, Process Engraving Company, its officers, directors, representatives, agents and employees, cease and desist—

From using the words "process engraving," "engraved by our process," or the word "engraving," either alone or in combination with any other word or words, in its advertisements and advertising matter distributed or displayed to the public in the several States of the United States, to designate or describe stationery sold by it, the lettering, inscription or designs on which have been printed from inked type faces, electrotypes or similar devices, and which stationery does not have thereon impressions from engraved plates or dies, and which lettering, inscriptions or designs have been given a raised letter effect by the application of a chemical in powder form to the ink while it was still wet, then subjecting same to heat, thereby causing the chemical so applied to fuse with the wet ink.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within ninety (90) days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondents in connection with the sale of its products in interstate commerce, subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

JOSEPH GREENBARG, BEN GREENBARG AND EVA GREENBARG, COPARTNERS, TRADING AS KING OVERALL COMPANY, ATLANTIC OVERALL COMPANY AND A. GREENBARG SONS.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1079—February 16, 1924.

SYLLABUS.

Where a firm engaged in the manufacture of overalls and trousers under the "open shop" plan, and in the sale thereof, branded and labeled the same with their registered brand or trade name and with the words "Union Made," in conspicuous type, with the capacity and tendency to deceive and mislead a substantial portion of the purchasing public, who preferred garments manufactured in a union shop by union workmen, and to divert trade from accurately marked goods:

Held, That the sale of goods labeled as above set forth constituted an unfair method of competition.

Mr. Morgan J. Doyle for the Commission.

Mr. Max Aron, of Philadelphia, Pa., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Joseph Greenbarg, Ben Greenbarg and Eva Greenbarg, copartners, trading as King Overall Company, Atlantic Overall Company and A. Greenbarg Sons, and more particularly hereinafter described and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of the said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Joseph Greenbarg, Ben Greenbarg and Eva Greenbarg, copartners, trading as King Overall Company, Atlantic Overall Company and A. Greenbarg Sons, with their principal office and place of business in the city of Philadelphia, State of Pennsylvania, are now and have been for more than one year last

past engaged in the business of manufacturing and selling overalls and trousers in wholesale and retail quantities; that said overalls and trousers so manufactured and sold by respondents, as aforesaid, were transported by said respondents and/or were caused to be transported by said respondents from the State of Pennsylvania to and into the States of Delaware, New Jersey, and various other States; that is to say, in interstate commerce. In the course of their business respondents were at all times hereinafter mentioned and still are in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 2. Respondents, in the course and conduct of their business, as described in paragraph 1 hereof, in the manufacture of their products, as aforesaid, employ artisans or workmen who are not members of nor affiliated with associations or organizations generally known, recognized and referred to as unions; that said respondents sell and transport in interstate commerce, as aforesaid, their merchandise consisting of men's overalls and trousers, to each of which said garments is attached a brand or label containing respondents' registered trade brand, trade name, and in conspicuous type the words "Union Made."

PAR. 3. That the said brands or labels so attached to the said overalls and trousers and so containing the words "Union Made," as aforesaid, are false, deceptive and misleading and are designed to and/or do deceive and mislead the purchasers or prospective purchasers into the belief that said overalls and trousers so manufactured, sold and transported by said respondents, as aforesaid, and so containing the said "Union Made" labels, as aforesaid, are "Union-Made" overalls or trousers; that is to say, overalls or trousers manufactured, produced or fabricated by workmen or artisans who are members of or affiliated with associations or organizations generally known, recognized and referred to as unions; when in truth and in fact said overalls and trousers so manufactured, sold and transported from State to State, in interstate commerce, as aforesaid, by said respondents, as aforesaid, are not "Union Made" overalls or trousers as was and is represented and pretended by said respondents and represented and pretended by said brands or labels, but said overalls and trousers are "non-Union-Made"; that is to say, that said overalls and trousers are manufactured and fabricated by workmen and artisans who are not members of nor affiliated with any association or organization generally known, recognized and referred to as a "Union."

PAR. 4. That the use by respondents on their product of the said brands or labels containing the words "Union Made" has the tendency and capacity to mislead and deceive and/or does mislead and deceive a substantial part of the purchasing public who prefer merchandise or garments fabricated by artisans or workmen who are members of or affiliated with associations or organizations generally known, recognized and referred to as "unions," into the belief that said product is or was fabricated by artisans or workmen who are members of or affiliated with associations or organizations generally known, recognized and referred to as "unions"; that the use of the said false and misleading brand or label by respondents, containing the words "Union Made," has the further tendency and capacity to divert trade from truthfully marked goods.

PAR. 5. That the above alleged acts and things done by respondents are all to the prejudice of the public, and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Joseph Greenbarg, Ben Greenbarg, and Eva Greenbarg, copartners trading as Atlantic Overall Company, King Overall Company, and A. Greenbarg Sons, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents entered their appearances on the 23rd day of October, 1923, and made answer in writing to said complaint. Respondents on January 9, 1924, made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Joseph Greenbarg, Ben Greenbarg and Eva Greenbarg, are copartners trading as Atlantic Overall Company, King Overall Company, and A. Greenbarg Sons, with

their principal office and place of business in the city of Philadelphia, in the State of Pennsylvania. Respondents have been and still are engaged in the business of manufacturing and selling overalls and trousers in wholesale and retail quantities. The said overalls and trousers, when so manufactured and sold by respondents, were transported at the request of respondents, from the State of Pennsylvania to and into other States of the United States, to wit, Delaware, New Jersey, and various other States. In the course of their business respondents were, and still are, in competition with other individuals, firms, partnerships and corporations likewise engaged in the sale and distribution of overalls and trousers in commerce.

PAR. 2. Respondents, in the manufacture of their said products, operated an "open shop"—that is to say, in the operation of their factory they employed artisans or workmen without regard to whether such person so employed were members of or affiliated with a "union." A large number of persons so employed by respondents were not members of any "union." Respondents' products, to wit, overalls and trousers, were manufactured and fabricated by the persons and workmen so employed. To the overalls and trousers so manufactured and sold by respondents there were attached brands and labels containing respondents' registered brand or trade name and, in conspicuous type, the words "Union Made." After the overalls and trousers were so manufactured and labeled, they were sold and shipped by respondents, some of them being sold and shipped to other States, in interstate commerce.

PAR. 3. The generally known and accepted meaning of the words "Union Made," when placed upon any brand or label attached to overalls or trousers sold and transported in interstate commerce is, that such overalls or trousers so bearing the words "Union Made" were manufactured or fabricated in a "union" shop by workmen or artisans who are members of or affiliated with a "Labor Union." The words "Union Made," when used by respondents as aforesaid, have the capacity and tendency to induce prospective purchasers of the garments so bearing such words to believe that the garments are "Union Made" according to the generally accepted usage of the term "Union Made." The words "Union Made," when used as aforesaid, have the tendency and capacity to deceive and mislead a substantial portion of the purchasing public, who prefer garments fabricated by artisans or workmen who are members of and affiliated with such a "union," into the belief that the garments bearing such words were fabricated and manufactured in a "union" shop by "union" workmen or artisans.

PAR. 4. The use by respondents, in the manner aforesaid, of the brands and labels containing the words "Union Made," has the tendency and capacity to divert trade from accurately marked goods.

CONCLUSION.

The practices of said respondents under the conditions described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Joseph Greenbarg, Benjamin Greenbarg and Eva Greenbarg, copartners, trading as Atlantic Overall Company, King Overall Company and A. Greenbarg Sons, do cease and desist from directly or indirectly selling in commerce among the States of the United States, overalls or trousers with the words "Union Made" stamped, imprinted or placed upon such garments or upon labels or cards attached thereto, unless and until such overalls or trousers are in fact manufactured, made or fabricated in a "Union" shop, by persons who are members of a labor union.

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

Syllabus.

FEDERAL TRADE COMMISSION

v.

UNITED STATES PRODUCTS COMPANY, CHARLES C. BUTTENFIELD, AND HARRY C. HAGMAIER.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 898—February 23, 1924.

SYLLABUS.

Where a company engaged in the manufacture and sale of an abrasive bearing fitting compound which it called "Time Saver" and extensively advertised and which was the result of long experimentation on the part of its manager and was eventually patented; and thereafter an individual, under contract with it as its authorized representative and sales agent, acting in behalf of a business which he organized and incorporated to manufacture and sell a competitive product based upon the formula of said "Time Saver," as disclosed by analysis which he caused to be made, and which product he called "Kwik-Ak-Shun" and caused to be patented under a formula other than that actually employed in the manufacture thereof, as aforesaid,

(*a*) Falsely advertised and represented that the name of such company's compound had been changed from that of "Time Saver" to "Kwik-Ak-Shun," and that his product "had been in use in a small way for over a quarter of a century and has operated satisfactorily during this period," misrepresented to a distributor of the product "Time Saver" the discounts allowed by such company and the extent of the advertising for the benefit of his product "Kwik-Ak-Shun," and through his association with another former sales agent of such company and in other ways passed off and attempted to pass off and substitute his product as and for that of such company;

(*b*) Falsely advertised to the trade that his product was the only patented bearing compound of its kind on the market and was the original product, and that the other was a duplicate, or an inferior imitation, and constituted an infringement, and that steps were being taken to prosecute therefor;

(*c*) Submitted pretended letters which he fabricated, and the signatures to which he forged, and caused to be forged, to the Federal Trade Commission as the basis for a proceeding by said Commission against such company, for unfair competition; and

(*d*) Simultaneously and extensively advertised his application to the Commission for relief, in trade papers, together with assertions and charges of the character above set forth, and notified customers of such company of his aforesaid application;

With the result that the sales of such company's compound fell off to a great extent and the difficulty of retaining the remainder of its business was greatly increased:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Walter B. Wooden and *Mr. E. R. Blake* for the Commission.

Mr. Charles M. Clarke of Clarke & Doolittle of Pittsburgh, Pa., for respondent United States Products Co. and respondent Charles C. Buttenfield.

COMPLAINT.[1]

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the United States Products Company, Charles C. Buttenfield, and Harry C. Hagmaier, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent company is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in the city of Pittsburgh in said State. It is engaged in the manufacture of an abrasive bearing-fitting compound named by it "KWIK-AK-SHUN," and in the sale thereof to owners and operators of garages, automobile repair shops, and machine shops and to other persons throughout the United States. It causes the said product when so sold to be transported from its said place of business in the city of Pittsburgh to said purchasers at points in various States of the United States. In the course and conduct of its said business, respondent company was and is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and sale or sale of similar abrasive compounds in interstate commerce, and with the trade generally. Respondent Buttenfield is now the treasurer and holds the controlling interest in respondent company. Respondent Hagmaier is now the president of respondent company. This proceeding is brought against them individually for acts done prior to or in connection with the incorporation of respondent company.

PAR. 2. Amongst the aforesaid competitors of respondent company is the M. T. K. Products Co., which at all times hereinafter mentioned was and still is engaged in the manufacture and sale, in interstate commerce, of a similar abrasive compound in a like manner as respondent company. Said compound is known and sold under the name "TIMESAVER" and was perfected and placed on the market in 1918 and 1919. A patent was applied for on the compound "TIMESAVER" under date of June 30, 1919, and same was allowed by the United States Patent Office on November 6,

[1] As amended.

1919. Application for an amended patent on "TIMESAVER" was filed under date of April 29, 1920, and was allowed by the United States Patent Office on January 8, 1921. Late in the year 1919 a contract was entered into between said M. T. K. Products Co. and respondent Charles C. Buttenfield, under which the latter agreed to become the sales agent for the compound "TIMESAVER" in the State of Pennsylvania for a period of three years. In the year 1920 new contracts were entered into between said M. T. K. Products Co. and respondent Buttenfield under which the States of Michigan, Indiana, Kentucky and Ohio were added to said Buttenfield's territory as the sales agent for "TIMESAVER." It was understood and agreed between said parties that respondent Buttenfield should conduct his sales of "TIMESAVER" under the name United States Products Company, which was done until some time during the year 1920.

PAR. 3. During the year 1920, while respondent Buttenfield's obligations under the aforesaid contracts were uncompleted, and pursuant to threats made by him, said Buttenfield began the manufacture and sale, under the name of United States Products Co., of a competing abrasive compound, to which he attached the name "KWIK-AK-SHUN." The name "KWIK-AK-SHUN," both in form and substance, had been suggested in respondent Buttenfield's hearing by the sales manager of the M. T. K. Products Co. as a possibly superior substitute for the name "TIMESAVER."

PAR. 4. During the months of June and July 1920 while the contract described in paragraph 2 of this complaint was in full force and effect, respondent Buttenfield, for the purpose and with the effect of securing the customers of the M. T. K. Products Co., distributed samples of a compound which he represented to be the compound "KWIK-AK-SHUN," but which in reality was the compound "TIMESAVER," the product and the property of the M. T. K. Products Co. During the same period specified in this paragraph respondents Buttenfield and Hagmaier endeavored to substitute and in some instances did substitute the product known as "KWIK-AK-SHUN" on orders placed with said Buttenfield for "TIMESAVER," said orders having been placed by virtue, of the sales agency contract between the said M. T. K. Products Co. and respondent Buttenfield.

PAR. 5. Prior to placing said competing compound on the market, and while acting as the sales agent for the M. T. K. Products Co., respondent Buttenfield associated himself with respondent Hagmaier. Said respondents jointly procured a technical laboratory analysis of the compound "TIMESAVER," Respondent Hagmaier

thereupon made application for a patent based upon the result of said laboratory analysis, claiming that he personally was the original inventor. Respondent Hagmaier assigned the patent secured thereby to the United States Products Co. The United States Products Co. was subsequently incorporated as alleged in paragraph 1 of this complaint.

PAR. 6. In or about the month of March, 1921, respondent company prepared and circulated among the jobbers handling abrasive bearing compounds, printed circulars containing the false statement that "at present 'KWIK-AK-SHUN' is the only Bearing Compound of its kind on the market that is patented." Said statement was false, in that a patent had been allowed on the compound known as "TIMESAVER" on November 6, 1919, and an amended patent on January 8, 1921. Said circulars also contained the following false and misleading statements:

> That we have substantial evidence that other compounds being offered for sale infringe our patent rights. An analysis made for us by a firm of recognized analytical chemists discloses one compound in particular of those referred to to be a duplicate of "KWIK-AK-SHUN." Our counselors state that we have a clear case of infringement. Accordingly we are taking steps to prosecute said infringers in the manner as provided by law.

Said statements were false and misleading, in that the said analysis, while it did show that "TIMESAVER" and "KWIK-AK-SHUN" were practically identical, was procured by the respondents Buttenfield and Hagmaier for the purpose of duplicating the compound known as "TIMESAVER," as set out in paragraph 5 of this complaint.

PAR. 7. In or about the month of June, 1921, respondents Buttenfield and Hagmaier conceived the idea of applying to the Federal Trade Commission for relief against certain alleged unfair methods of the M. T. K. Products Co. In order to substantiate respondent company's claims of injury resulting from these alleged unfair methods, the respondents Buttenfield and Hagmaier, as treasurer and president, respectively, of respondent company, forged, or caused to be forged, the signatures of various customers and prospective customers to letters which falsely set forth that salesmen of the M. T. K. Products Co. had threatened said parties with patent infringement suits, that orders were being cancelled and goods returned to the respondent company because of said threats and that, in the opinion of the parties whose names were forged, "TIMESAVER" was inferior to "KWIK-AK-SHUN." Said forged documents were filed

with the Federal Trade Commission in support of respondent company's allegations that definite injury had resulted from the threats falsely alleged to have been made by the salesmen of the M. T. K. Products Co.

PAR. 8. Coincident with the filing of the aforesaid forged documents, respondent company issued and circulated generally among the jobbers of abrasive bearing compounds, printed card notices stating that "TIMESAVER" was "an inferior imitation of our product." About the same time respondent company caused to be published and circulated in trade magazines, widely read by jobbers and retailers of bearing compounds, advertisements which reiterated respondent company's claim that "TIMESAVER" was an "inferior imitation" of "KWIK-AK-SHUN," and which falsely claimed that "KWIK-AK-SHUN" "is the only bearing fitting compound manufactured under government patents." Said statements were false for the reasons set out in paragraphs 5 and 6 of this complaint.

PAR. 9. The aforesaid printed card notices circulated by the respondent company also contained the statement that "TIMESAVER" was "being put out under the ALLEGED PROTECTION OF PATENTS," that suit for infringement had been instituted in the courts against certain distributors of "TIMESAVER," that it "had commenced proceedings for unfair competition" against M. T. K. Products Co. and one of its distributors, "before the Federal Trade Commission to enjoin the same," and that similar actions would be instituted "wherever our rights are disregarded."

PAR. 10. The aforesaid wide distribution of said notices, circulars and advertisements was calculated and tended to prejudice the trade, including customers and prospective customers of the M. T. K. Products Co. in favor of the respondent company, to intimidate otherwise willing purchasers of "TIMESAVER" from freely purchasing that compound, and to induce the trade, in advance of determination by a competent judicial tribunal, to believe that the merits and equities of the dispute between the aforesaid companies necessarily would be determined in favor of respondent company.

PAR. 11. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents herein charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances by their attorneys and having duly filed their respective answers admitting certain allegations of said complaint and denying others, and hearings having been held before an examiner of the Commission theretofore duly appointed, and counsel for the Commission having offered testimony and documentary evidence in support of the said charges of the complaint and said respondents having offered evidence in their defense, which evidence was recorded, duly certified, and duly transmitted to the Commission, and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received as heretofore set out, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the United States Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal place of business in the city of Pittsburgh in said State; that said respondent company was incorporated September 1, 1920, by the respondent C. C. Buttenfield; that for a period of nine or ten months prior to the incorporation of said respondent company said respondent, C. C. Buttenfield, had carried on the business as an individual under the name and style of United States Products Company; that when the respondent company was incorporated, said respondent C. C. Buttenfield, who owned a large majority of the stock and had control of the organization, made the said respondent, H. C. Hagmaier, president, and made himself treasurer of said respondent company; that said respondent, H. C. Hagmaier, as president of said respondent company, was a mere figurehead; that he had nothing to do with the business management nor with directing the affairs or policies of said respondent company; that the entire management of said respondent company was in the control of said respondent, C. C. Buttenfield; that said respondent, H. C. Hagmaier, was president of said respondent company from its incorporation in September of 1920 until May of 1922, at which time he resigned, and since that time has not been connected with

said respondent company in any capacity; that some time after respondent company was incorporated, said respondent, C. C. Buttenfield, transferred all his stock in said respondent company, except one share, to his wife, but still is and at all times has been the sole manager of the affairs of said respondent company.

PAR. 2. That said respondent company manufactures and sells an abrasive bearing fitting compound which it calls Kwik-Ak-Shun; that said compound is a powder sold in cans and used principally by garages and automobile repair shops; that said respondent company sells said compound generally throughout the United States; that said respondent company employs salesmen located at various States of the United States to sell said compound; that in the sale of the said compound Kwik-Ak-Shun, said respondent company causes same to be transported from the State of Pennsylvania through and into various other States of the United States to purchasers located in said various other States; that in the manufacture and sale of said product and in causing said product when sold to be transported from the State of Pennsylvania, as above stated, said respondent company was in active and direct competition with persons, firms, and corporations similarly engaged.

PAR. 3. That the M. T. K. Products Company is a common law trust organized under and by virtue of the laws of the State of Washington, having its principal place of business in the city of Seattle in said State; that said company was organized August 15, 1919; that one of the trustees and the manager of said M. T. K. Products Company is one Joseph A. Menard; that said company is engaged in the manufacture and sale of an abrasive bearing fitting compound which it calls Time Saver; that said compound Time Saver is put up in cans and is sold generally throughout the United States; that during the years 1919, 1920, and subsequently the M. T. K. Products Company spent large sums of money in advertising Time Saver and introducing it to the trade; that in the sale of said product Time Saver, said M. T. K. Products Company causes the same to be transported from the State of Washington through and into various other States of the United States to purchasers so located in said various other States; that in the sale and in causing said product to be transported as aforesaid, the said M. T. K. Products Company is in active and direct competition with other persons, firms, and corporations and with the respondent, United States Products Company.

PAR. 4. That for some fifteen years prior to April 1919, said J. A. Menard had been experimenting with an abrasive compound and had so perfected said compound, that in said month of April, 1919, he be-

gan to place it generally upon the market and to sell it in various States of the United States; that said compound has merit, in that it enables a person to fit a bearing quicker and better than could be done by the old method known as "scraping in the bearing"; that prior to placing said compound upon the market, said Menard had adopted for it the name "Time Saver"; that on June 30, 1919, said Menard applied to the United States Patent Office for letters patent on said abrasive compound; that on November 6, 1919, the said application for patent was allowed and said Menard notified to send in the final payment within six months from that date; that said Menard did not make the final payment within the time fixed; that on May 11, 1920, said Menard petitioned the Commissioner of Patents for a renewal of his forfeited application. This original application and the petition for renewal have not resulted in a patent being granted; that on April 29, 1920, said Menard filed an application for a patent on his abrasive compound which was allowed and on June 14, 1921, patent No. 1381728 was granted to the said Joseph A. Menard by the United States Patent Office.

PAR. 5. That on January 1, 1920, the respondent, C. C. Buttenfield, entered into a contract with the said M. T. K. Products Company, whereby he became state agent in the sale of said product Time Saver in the State of Pennsylvania; that on February 1, 1920, by contract dated that date, said respondent Buttenfield's territory was extended and he was granted the exclusive right by said M. T. K. Products Company to sell said product Time Saver in the States of Virginia, West Virginia, Maryland, Delaware, New Jersey, and the District of Columbia; that on April 16, 1920, another contract was entered into between said M. T. K. Products Company and said respondent C. C. Buttenfield, whereby said respondent C. C. Buttenfield acquired additional territory consisting of the States of Michigan, Indiana, Virginia, and Kentucky; that the above mentioned contracts were to run for a period of three years; that at the time above contracts were entered into, said respondent, C. C. Buttenfield was operating under the name of United States Products Company; that while acting as sales agent for Time Saver respondent Buttenfield became strongly impressed with the belief that there were unusual money-making possibilities in its manufacture and sale and that he made various offers to buy out the Time Saver business, including one offer to organize a company which would pay $1,000,000 and other considerations to the M. T. K. Products Company.

PAR. 6. That about the 25th of May, 1920, said respondent, C. C. Buttenfield instructed said respondent, Harry C. Hagmaier, to have a chemical analysis made of the product Time Saver; that said re-

spondent, Harry C. Hagmaier, removed the label from a can of Time Saver and took said can of Time Saver to the Pittsburgh Testing Laboratory and requested said laboratory to make an analysis of the contents of the said can; that said laboratory made the analysis as requested and on June 7, 1920, made a report showing the ingredients of the product Time Saver and the proportionate amount of each; that after said report of the analysis had been received said respondent C. C. Buttenfield directed said respondent H. C. Hagmaier to try to make a compound, using the reports of the analysis of Time Saver as a formula; that the said respondent, H. C. Hagmaier, was not sufficiently versed in chemistry to make up a compound; that the said respondent H. C. Hagmaier procured the aid of one Dr. William Sieber and one Theodore Klein; that the said respondent H. C. Hagmaier and Dr. Sieber and Theodore Klein mixed a compound using a formula made by Dr. Sieber, which was based upon an analysis of the product Time Saver made by said Pittsburgh Testing Laboratory and an analysis made by himself, in which formula the average between the two analyses above mentioned was taken; that the said respondent Hagmaier and the said Klein carried on experiments and compared the compound they had mixed with the product Time Saver; that during the time said compound was being mixed and tested, said respondent C. C. Buttenfield was kept informed as to the progress being made; that said respondent C. C. Buttenfield was present on a number of occasions when a test of the compound, made under the Sieber formula, was made; that after said respondent C. C. Buttenfield ascertained that a compound could be made by following the Sieber formula, he directed the said respondent H. C. Hagmaier to apply for a patent on said compound and took him to an attorney's office for that purpose; that previous to taking said H. C. Hagmaier to the attorney's office, the said respondent, C. C. Buttenfield, knew that said Menard had applied for a patent on the bearing fitting compound called Time Saver made by the M. T. K. Products Company and said respondent C. C. Buttenfield also knew what ingredients entered into the composition of the said product Time Saver; that the formula presented to the attorney was not similar to the analysis of the product Time Saver in that said product Time Saver contained from 4 per cent to 6 per cent of carbon in the form of lamp black and the formula on which patent was granted, as set out in paragraph 7, calls for 44½ per cent of carbon in the form of graphite; that very shortly after said application for a patent was filed, said respondent, United States Products Company, started the manufacture and sale of the compound which it calls Kwik-Ak-

Shun; that in manufacturing said compound Kwik-Ak-Shun, said respondents did not follow the formula on which the application for patent was based, but did follow the formula made up by the said Dr. Sieber, which was based on the analysis of Time Saver; that an analysis of the compound Kwik-Ak-Shun made on the 7th of September, 1923 by the United States Bureau of Standards, shows that the said respondents in the making of Kwik-Ak-Shun are not following the formula set out in the said Patent No. 1361719 issued to respondent H. C. Hagmaier and assigned to the said respondent United States Products Company, although respondent Buttenfield had testified to the contrary.

PAR. 7. That on June 30, 1920, the said H. C. Hagmaier filed an application with the United States Patent Office for a patent on a bearing fitting compound; that on the date the application referred to was made, said respondent H. C. Hagmaier assigned all interest in the patent that might be granted as a result of said application, to the respondent United States Products Company; that on December 7, 1920, Patent No. 1361719 was granted to H. C. Hagmaier, assignor to United States Products Company, a corporation of Pennsylvania.

PAR. 8. That when respondent Buttenfield began to put the product Kwik-Ak-Shun on the market he was still the authorized representative of the said M. T. K. Products Company in the sale of Time Saver; that about February, 1920, one Paul G. Rast was representing said M. T. K. Products Company in the sale of Time Saver in the State of Ohio, operating as the Time Saver Sales Company, with headquarters at Cleveland; that said Paul G. Rast had just succeeded to the business of his deceased brother who had had a contract with the said M. T. K. Products Company to sell Time Saver in the State of Ohio; that some time in May, 1920, said respondent Buttenfield wrote to said Rast to ascertain if he was interested in the distribution of products other than Time Saver; that negotiations were started which resulted in said Rast combining his business with that of the respondent United States Products Company; that at this time said United States Products Company had not been incorporated and said Rast turned over to Buttenfield his business in the state of Ohio with the understanding said United States Products Company would be incorporated and he receive shares of stock in said corporation as payment for his Ohio business; that upon the consolidation said Buttenfield made public announcement implying that the name of the product Time Saver was being changed to Kwik-Ak-Shun; that various efforts were made to substitute Kwik-Ak-Shun on orders received by said Rast and Buttenfield for Time

Saver, such orders having been placed by customers in the belief that Buttenfield and Rast were still acting as sales agents for the M. T. K. Products Company; that in a number of instances substitutions of Kwik-Ak-Shun were actually made on orders received for Time Saver and efforts were made to overcome the objections of customers to such substitution; that respondent Buttenfield made representations to the United States Bureau of Standards that Kwik-Ak-Shun was merely a new name for the product Time Saver.

PAR. 9. That respondent Buttenfield advertised to the trade that the compound Kwik-Ak-Shun had "been in use in a small way for over a quarter of a century and has operated satisfactorily during this period" and that respondent Buttenfield admitted that this claim had no basis in fact; that in November, 1920, respondent Buttenfield wrote letters to a certain distributor of the product Time Saver in which he made knowingly false statements concerning discounts which the M. T. K. Products Company had allowed its distributors, and knowingly false statements concerning the extent of the advertising done on the product Kwik-Ak-Shun.

PAR. 10. That in or about March, 1921, respondent Buttenfield in the name of the United States Products Company circulated in the trade printed advertisements containing statements to the effect that Kwik-Ak-Shun was the only patented bearing compound of its kind on the market; that other compounds offered for sale infringed the Kwik-Ak-Shun patent; that an analysis made by a firm of analytical chemists disclosed one compound in particular to be a duplicate of Kwik-Ak-Shun and that steps were being taken to prosecute said infringers; that the one compound in particular referred to in said circular was Time Saver; that the statements in said circular as to Time Saver being a duplicate of Kwik-Ak-Shun were known by said Buttenfield to be false in that Time Saver was not an imitation or a duplicate of Kwik-Ak-Shun, but that Kwik-Ak-Shun was an imitation or a duplicate of Time Saver.

PAR. 11. That prior to the 25th day of July, 1921, said respondent C. C. Buttenfield requested his attorney to file a complaint against the said M. T. K. Products Company with the Federal Trade Commission charging said M. T. K. Products Company with unfair competition; that the said respondent C. C. Buttenfield was informed by said attorney that before complaint could be filed, it was necessary to have some evidence upon which to base a complaint; that any letters received from customers of the said United States Products Company complaining of any unfair practices on the part of the said M. T. K. Products Company would be good exhibits to accompany the complaint; that said respondent C. C. Buttenfield had

no letters of this character; that said respondent C. C. Buttenfield directed the said respondent H. C. Hagmaier to visit several garages and automobile sales companies in the city of Pittsburgh and procure blank letter heads from the places visited; that said respondent H. C. Hagmaier visited some seven or eight different places and secured a blank letter head at each place; that said respondent H. C. Hagmaier took the blank letter heads thus collected to the office of the United States Products Company and gave them to respondent C. C. Buttenfield; that the said respondent C. C. Buttenfield dictated certain letters to the two stenographers employed by the said United States Products Company; that he then handed the blank letter heads collected as hereinbefore set out to said stenographers and directed them to write certain letters so dictated on said blank letter heads; that the said respondent C. C. Buttenfield also instructed the said stenographers to vary the appearance of the letters as they wrote them to use single space between the lines on some of the letters and double space on the others; that when said letters were written they were placed by said stenographers on the desk of the said respondent C. C. Buttenfield; that said respondent C. C. Buttenfield and H. C. Hagmaier and said Paul G. Rast signed said letters by writing at the bottom of the letter the name of the person who was the owner or connected in some official capacity with the firm as shown by the letter head; that the letters were so signed by the said respondents, Buttenfield and Hagmaier, and the said Rast in the presence of the two stenographers; that the said respondents, Buttenfield and Hagmaier and the said Rast were not authorized to sign the name of the person whose name appears on said letter head; that after the said letters had been signed, as above set out, they were delivered to the attorney and forwarded to the Federal Trade Commission with the petition of said respondent United States Products Company, for a complaint against the said M. T. K. Products Company; that about this time said Paul G. Rast resigned from respondent United States Products Company, informed said J. A. Menard of the circumstances under which said letters had been prepared, and told said Hagmaier that he had so informed Menard; that thereupon said Hagmaier informed said Buttenfield of Rast's disclosures to Menard and that thereupon said Buttenfield's attorney advised the Federal Trade Commission that said letters were not authentic; that shortly thereafter Mr. Cyr, an examiner for the Federal Trade Commission, called at the said United States Products Company and interviewed both respondent Buttenfield and respondent Hagmaier; that he was informed by said respondent that said Rast was the party responsible for the authorship of said letters;

that said respondent Buttenfield thereupon dictated, signed, and swore to a statement concerning the authorship of said letters, which statement was false and was known by said Buttenfield to be false at the time he signed and swore to it; that the said respondent H. C. Hagmaier also made a statement putting the blame for preparing said letters on said Rast; that said respondent C. C. Buttenfield was present when said Hagmaier made said statement and signed and swore to it, that the said respondent H. C. Hagmaier knew the statement was untrue when he signed and swore to it; that the said respondent C. C. Buttenfield, who was present, also knew the statement of the said Hagmaier was not true when it was sworn to.

PAR. 12. That in May, 1921, said respondent Buttenfield, acting for respondent United States Products Company, prepared to enter into an extensive advertising campaign which ran for several months; that this advertising campaign was in preparation for several months before it was released; that it was released simultaneously with the filing by respondent Buttenfield of the petition and fabricated letters with the Federal Trade Commission, that respondent Buttenfield caused advertisements to be placed in trade journals such as the Motor World and Motor Age; that he also caused circulars and pamphlets to be printed which were given wide distribution throughout various States of the United States; that in said advertisements and circulars respondent United States Products Company made the statement "that Kwik-Ak-Shun is the only bearing fitting compound manufactured under Government patents" and that "it having come to our attention that an inferior imitation of our product Kwik-Ak-Shun is being put out under the alleged protection of patents we have been compelled to institute suits for infringement in the courts and for unfair competition before the Federal Trade Commission to enjoin the same. Similar action will be instituted wherever our rights are disregarded as we propose to protect ourselves and our customers in every such case"; that simultaneously with the release of said advertising campaign respondent Buttenfield mailed or caused to be mailed printed notices to customers of the M. T. K. Products Company; that these notices specifically stated that Time Saver was the "inferior imitation" referred to in said advertising and that respondent Buttenfield also circulated among the sales representatives of the United States Products Company for their use in soliciting business, information to the effect that Time Saver was the "inferior imitation" referred to in said advertising.

PAR. 13. That at the time the above described statements and advertisements appeared in trade papers, circulars, and pamphlets respondent Buttenfield knew they were false in that patent No.

1318728 had been granted to J. A. Menard as set out in paragraph 4 hereof; that said respondent C. C. Buttenfield also knew that the statement characterizing Time Saver as an inferior imitation of Kwik-Ak-Shun was false in that he knew that the product Kwik-Ak-Shun was being manufactured as the result of an analysis which he had caused to be made of the product Time Saver; that in all the things done by him as set out herein respondent Buttenfield was acting in bad faith and with full knowledge of that fact; that the statements made and the acts done by respondents as previously set forth greatly affected the sales of the product Time Saver, caused the volume of such sales by the M. T. K. Products Company to fall off to a great extent, and substantially increased the difficulty with which said M. T. K. Products Company retained the remander of its business.

CONCLUSION.

That the practices of the respondents, as set forth in the foregoing findings as to the facts, are in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel, oral argument having been waived by respondents' counsel, and the Commission having made its findings as to the facts and having reached its conclusion that the respondents have violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That respondent Charles C. Buttenfield individually and as an officer of respondent United States Products Company, and respondent United States Products Company, cease and desist from—

(1) Advertising and representing to the trade that the product Kwik-Ak-Shun is the result of any invention on the part of the patentee Hagmaier.

(2) Advertising and representing to the trade that Time Saver was not or is not patented and that it was or is an infringement of

a patent owned or controlled by respondent United States Products Company or by respondent Buttenfield, at the time this proceeding was instituted.

(3) Passing off or attempting to pass off the product Kwik-Ak-Shun as and for Time Saver, the product of the M. T. K. Products Company.

(4) Advertising and representing to the trade that Kwik-Ak-Shun is the original product and that Time Saver is a duplicate thereof.

(5) Advertising and representing to the trade that Time Saver is an inferior imitation of Kwik-Ak-Shun.

(6) Fabricating letters, forging signatures thereto, and submitting same to the Federal Trade Commission as the basis for action by said Commission against a competitor.

(7) Making application to the Federal Trade Commission for relief against a competitor and simultaneously advertising to the trade the filing of such application before the issues involved are determinable by the Federal Trade Commission.

(8) Notifying the customers of a competitor that charges have been filed with the Federal Trade Commission against said competitor, and simultaneously publishing advertisements to the same effect, before the issues involved are determinable by the Federal Trade Commission.

It is further ordered, That the respondents shall file with the Federal Trade Commission, within 60 days from the date of this order, their report in writing stating the manner and form in which this order has been conformed to.

ORDER OF DISMISSAL AS TO RESPONDENT HAGMAIER.

This proceeding having come on for hearing before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial examiner's report upon the facts, and the exceptions thereto, and it appearing to the Commission that the respondent Harry C. Hagmaier as to all the acts alleged was acting under the direction and advice of respondent Charles C. Buttenfield, and that prior to the issue of the complaint herein, respondent Hagmaier severed all connection with respondents United States Products Company and Charles C. Buttenfield, the Commission being fully advised in the premises,

It is ordered, That the complaint herein be and the same is hereby dismissed as against respondent Harry C. Hagmaier.

FEDERAL TRADE COMMISSION

v.

PIONEER PAPER COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 472—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a composition felt base roofing material containing no rubber and made in varying weights and thicknesses; respectively designated, advertised, labeled and sold the same as "rubber" roofing, and as one-ply, two-ply, and three-ply, as the case might be, in accordance with the practice of some manufacturers, but contrary to that of many others who had discontinued the same; with the capacity and tendency to mislead part of the trade and the general purchasing public in reference to the composition and manufacture of such roofing, and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses, respectively, and with the intent and effect of inducing the purchase thereof in preference to the products of competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Pioneer Paper Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Pioneer Paper Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its principal office and place of business in the city of Los Angeles, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the

United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Pioneer Paper Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a stipulation as to the facts was entered into by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Pioneer Paper Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its principal office and place of business in the city of Los Angeles, in said State now and for more than five years last past engaged in the manufacture and sale of a composition felt-base roofing material, which is hereinafter referred to as asphalt roofing, and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. The asphalt roofing above referred to as commonly made by respondent and the several manufacturers thereof was and is composed of a base of felt made of rag waste and of other materials impregnated and coated with asphalt. Respondent, in the conduct of its business and to market and distribute the asphalt roofing so manufactured and sold by it in commerce among the several states as aforesaid has applied and affixed, and now applies and affixes to the rolls of its said roofing labels designating and referring to such roofing and containing the trade name or brand under which such roofing is sold to and purchased by the trade and the purchasing public and ultimate consumers; respondent has issued and now issues samples of the said kinds or brands of its said asphalt roofing, said samples being small pieces of the roofing itself, enclosed in printed paper or cardboard covers; respondent also issues printed circulars and other advertising matter, advertising such asphalt roofing; a portion of the samples, circulars and other advertising matter so issued is by respondent sent and distributed to persons who are or might be interested in the purchase and subsequent use of asphalt roofing, and large quantities thereof are by respondent sent to dealers and others who are or might be interested in the purchase and subsequent sale of such roofing to be used by them in such subsequent sale to other retail dealers or/to the general purchasing public; and such samples, circulars and other advertising matter have reached, and now reach the general purchasing public through such means. For many years last past it has been the practice of several but not of all of the manufacturers of asphalt roofing to designate and describe the same as "rubber" roofing, notwithstanding the fact that there was and is no rubber used in the composition of such roofing. Many of the said manufacturers who have heretofore used the term "rubber" to designate and describe such as-

phalt roofing have within the past three years, because of its ambiguous and misleading character, ceased to use the term "rubber." Prior to the issuance of the complaint herein, the respondent likewise designated and described its said roofing as "rubber" roofing and displayed and used upon said labels so applied and upon said circulars and other advertising matter so distributed by it, the name or term "rubber" as part of the trade names and brands for its said roofing, examples of such use of the name or term "rubber" being the describing, branding and labeling of such roofing as "Pioneer Rubber Flaxine Roofing." It was, and is intended by respondent that the labels, sample covers, circulars and other advertising matter hereinbefore and hereinafter referred to and the contents thereof and statements therein should reach the general purchasing public in the manner hereinbefore described for the purpose of increasing the sale of respondent's roofing and inducing such purchasing public to choose and purchase the roofing manufactured by respondent in preference to the roofing of competitors of respondent; and said labels, sample covers, circulars and other advertising matter and the contents thereof and statements therein did induce the general public to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

The use by respondent of the word "rubber" as above described is a false and misleading characterization, description and designation of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed wholly or partly of rubber and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is, in fact, purchasing roofing composed wholly or partly of rubber; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

PAR. 3. Asphalt roofing, as commonly made by respondent and the several manufacturers thereof, always consisted and consists of one single piece of felt impregnated and coated as hereinbefore set forth; it is offered for sale and sold by respondent and is customarily offered for sale and sold by other manufacturers thereof in rolls which contain approximately 108 square feet, this quantity being customarily called by such manufacturers, and in the roofing trade generally, a "square"; it is customarily offered for sale and sold by respondent, and by the other manufacturers thereof in at least three approximate weights of 35 pounds, 45 pounds, and 55 pounds per square; and the different weights or thicknesses of such roofing

were and are made by using different weights and thicknesses of the single felt piece. For many years last past it has been the practice of several, but not all, of the manufacturers of asphalt roofing to designate and describe the different weights and thicknesses of such roofing by the terms "one ply," "two ply," and "three ply" notwithstanding the fact that such roofing consisted of one ply, layer or thickness only and did not and does not consist of two or more plies, layers or thicknesses of felt, superimposed one upon the other and made into one piece by impregnating, binding, or otherwise fastening together such plies, layers or thicknesses; many of said manufacturers of such roofing who have heretofore used the terms "one ply," "two ply," and "three ply" to designate and describe the different weights and thicknesses of such roofing, have within the past three years, because of their ambiguous and misleading character, ceased to use the terms "one ply," "two ply," and "three ply"; the respondent prior to the month of February in the year 1920 in the labels, circulars and other advertising matter hereinbefore referred to made it a practice to likewise use the terms "one ply," "two ply," and "three ply" to designate and describe the different weights and thicknesses of the asphalt roofing manufactured and sold by it, notwithstanding the fact that such roofing consisted of one single piece of felt impregnated and coated as aforesaid, and not of two or more plies, layers or thicknesses of felt superimposed one upon the other and made into one piece.

The use by respondent of the words "two ply" and "three ply," as above described, is a false and misleading designation and description of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing, it is, in fact, purchasing a roofing composed of two or more plies, layers or thicknesses; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the stipulation as to the facts entered into by counsel for the Commission and the respondent, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That respondent, Pioneer Paper Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the words "two ply" or "three ply," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission's report in writing stating in detail the manner in which this order has been complied with.

[1] Made as of June 16, 1924.

FEDERAL TRADE COMMISSION

v.

WESTERN ELATERITE ROOFING COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 473—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a composition felt base roofing material containing no rubber and made in varying weights and thicknesses; in accordance with the practice of some manufacturers and jobbers, as known to many in the trade, but not to the general purchasing public, respectively designated, advertised, labeled and sold the same as "rubber" roofing and as one-ply, two-ply, and three-ply, as the case might be; with the capacity and tendency to mislead part of the trade and said public in reference to the composition and manufacture of such roofing and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses respectively:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Western Elaterite Roofing Co., hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Western Elaterite Roofing Co., is and at all times hereinafter mentioned was a corporation, existing and doing business under and by virtue of the laws of the State of Colorado, having its principal office and place of business in the city of Denver, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and

the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Western Elaterite Roofing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Western Elaterite Roofing Company, is, and at all times hereinafter mentioned was, a corporation existing and doing business under and by virtue of the laws of the State of Colorado, having its principal office and place of business in the city of Denver, in said State; and is now, and for more than three years last past has been engaged in the manufacture and sale of a composition felt-base roofing material, and in the shipment thereof, from its place of manufacture to purchasers thereof in other States of the United States, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. For a period of more than three years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce, as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize, describe, designate and refer to a certain type of such roofing material, hereinafter referred to as asphalt roofing, which has a smooth surface and is impregnated and covered with asphalt, and which was not and is not composed either in whole or in part of rubber, examples of such use of the word "Rubber" being the labeling and branding of such roofing as "Indian Rubber Roofing," "Buffalo Rubber Roofing," and "Reliable Rubber Roofing"; likewise it has been for the past several years the custom of several other manufacturers and jobbers of such asphalt roofing to designate and refer to this type of roofing as "Rubber" roofing, although it was not and is not composed either in whole or in part of rubber; and such fact or practice was and is well known to many of the jobbers and retailers of such roofing trade but was not and is not so known to the general purchasing public.

The use by respondent of the word "Rubber," as above described, is a false and misleading characterization, description and designation of its asphalt roofing and has the tendency and capacity to create a false impression and belief among part of the trade and the general public that respondent's said roofing and other roofing of the same type is composed wholly or partly of rubber and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is in fact purchasing roofing composed wholly or partly of rubber.

PAR. 3. Respondent, in the conduct of its aforesaid business, has put up and sold said asphalt roofing in rolls, such rolls containing 108 square feet each; and it has been and is a custom of the trade, among practically all manufacturers of asphalt roofing, to refer to the said amount, to wit: 108 square feet, as "a square" of roofing;

that said roofing varies in weight according to the thickness of the felt which forms the base of such roofing; that respondent and the great majority of other manufacturers of such roofing put up such roofing in at least three approximate weights, to wit, 35 pounds per square, 45 pounds per square and 55 pounds per square. Respondent, during the aforesaid period, in the conduct of its business, has sold and offered for sale, and is now selling and offering for sale, its said asphalt roofing of the aforesaid approximate weights of 35 pounds, 45 pounds, and 55 pounds per square under the designation and description of "1 ply," "2 ply," and "3 ply," respectively, although such roofing did not and does not consist of more than one separate ply, layer or thickness, but was and is, on the contrary, of one ply, layer or thickness; likewise, it has been a custom of many other manufacturers and jobbers of this type of roofing to refer to such roofing of the aforesaid approximate weights as "1 ply," "2 ply," and "3 ply," notwithstanding the fact that such roofing consists of but one ply, layer or thickness; and such fact or practice was and is well known to many of the jobbers and retailers of such roofing, but was not and is not so known to the general purchasing public.

The use by respondent of the words "2 ply" and "3 ply," as above described, is a false and misleading designation and description of its asphalt roofing and has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is in fact purchasing a roofing composed of two or more plies, layers or thicknesses.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of re-

[1] Made as of June 16, 1924.

spondent, the statement of facts agreed upon between counsel for the Commission and the respondent, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Western Elaterite Roofing Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber" alone or in combination with any other word or words to describe its product: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the words "2 ply" or "3 ply," alone or in combination with any other word or words to describe its product: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers, or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with.

FEDERAL TRADE COMMISSION

v.

SIFO PRODUCTS COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 474—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a composition felt base roofing material containing no rubber and made in varying weights and thicknesses; in accordance with the practice of some manufacturers in so designating their smooth quality roofing to distinguish the same from other qualities not so finished, designated, advertised, labeled and sold the same as "rubber" roofing, and, in accordance with the practice of manufacturers and dealers, as one-ply, two-ply, and three-ply, as the case might be; with the capacity and tendency to mislead part of the trade and the general purchasing public in reference to the composition and manufacture of such roofing and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses, respectively:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Sifo Products Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Sifo Products Company, is and at all times hereinafter mentioned was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business in the city of St. Paul, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition

felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling, and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling, and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the same product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, SiFo Products Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a stipulation as to the facts was entered into by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation, organized under the laws of the State of Minnesota, having its principal office and place of business in the City of St. Paul, Minnesota, and now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material, which it sells and ships in commerce to purchasers in other States of the United States and the District of Columbia, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The above-mentioned composition felt-base roofing material, which is hereinafter referred to as asphalt roofing as commonly and customarily made by the several manufacturers thereof, including respondent, is composed of a base of felt made of rag waste and other materials, impregnated and coated with asphalt. Respondent, in connection with the marketing of its said product and to advertise and distribute the same uses samples of the various kinds and brands of its said asphalt roofing, such samples being enclosed in a printed or cardboard cover, and respondent also uses printed circulars and other printed matter which it distributes to jobbers, retail dealers and others who might be interested in the purchase or use of said roofing, and in addition thereto respondent places upon its said product labels descriptive thereof with the results hereinbelow set out. For many years prior to the filing of the complaint herein, it has been the custom and practice of several but not all of the manufacturers of asphalt roofing to designate and describe a certain grade or quality of said asphalt roofing, to wit, a smooth quality as "Rubber Roofing," to distinguish that smooth quality of roofing from the other qualities of roofing not so finished but surfaced with slate or other mineral substances, notwithstanding the fact that there was and is no rubber used in the composition of the above described roofing; in like manner the respondent upon its said labels and in various circulars and other advertising matter prior to the filing of the complaint displayed or caused to be displayed the name or term "rubber" in connection with its said asphalt roofing, as hereinbefore set out.

The use by respondent of the word "rubber," as above described, is a false and misleading characterization, designation and description of its asphalt roofing and has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said asphalt roofing and other roofing of the same type is composed wholly or partly of rubber, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's

said asphalt roofing it is in fact purchasing a roofing composed wholly or partly of rubber.

PAR. 3. The above described asphalt roofing as commonly made by the several manufacturers thereof, including respondent, consists of one single piece of felt impregnated and coated, as aforesaid, and not of two or more plies, layers or thicknesses, superimposed one upon the other and made into one piece, the terms "one, two, and three ply" being applied simply to the different thicknesses and weights of such roofing; respondent's said asphalt roofing has always consisted of one single piece of felt, impregnated and coated as hereinbefore set out, made in differing weights and thicknesses to which respondent applies the terms "one, two, and three ply"; likewise for a number of years last past and prior to the filing of the complaint herein it has been the practice of manufacturers of and dealers in asphalt roofing to designate and describe the different weights or thicknesses of such roofing by the use of the terms "one-ply," "two-ply," and "three-ply," notwithstanding the fact that such roofing consists of one ply, layer or thickness only, and respondent followed that practice has hereinbefore set out.

The use by the respondent of the words, "two-ply" and "three-ply," as above described, is a false and misleading designation and description of its asphalt roofing and has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type consists of two or more plies, layers, or thicknesses, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is in fact purchasing a roofing that consists of two or more plies, layers, or thicknesses.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of

[1] Made as of June 16, 1924.

respondent, the stipulation as to the facts entered into by counsel for the Commission and the respondent, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, SiFo Products Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the words "two-ply" or "three-ply," alone or in combination with any other word or words to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with.

The Commission also made similar findings and orders, as of February 29, 1924, in the following cases:

Oertel Roofing Manufacturing Co., of East St. Louis, Ill. Docket 475. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Martin F. Oehmke* and *Mr. William E. Wheeler*, of East St. Louis, Ill., for respondent.

McHenry-Millhouse Manufacturing Co., of South Bend, Ind. Docket 479. Appearances: *Mr. John R. Dowlan* for the Commission.

Sylvester L. Weaver, Trading as The Weaver Roof Co., of Los Angeles, Cal. Docket 490. Appearances: *Mr. John R. Dowlan* for the Commission.

FEDERAL TRADE COMMISSION
v.
STOWELL MANUFACTURING COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 476—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a composition felt base roofing material containing no rubber and made in varying weights and thicknesses; respectively designated, advertised, labeled and sold the same as "rubber" roofing and as one-play, two-ply, and three-ply, as the case might be, in accordance with the practice of some of its competitors, but contrary to that of many others, who had discontinued the same; with the capacity and tendency to mislead part of the trade and the general purchasing public in reference to the composition and manufacture of such roofing, and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses, respectively, and with the intent and effect of inducing the purchase thereof in preference to the products of competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

Mr. Daniel Loeb, Receiver, of Jersey City, N. J., for respondent.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Stowell Manufacturing Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Stowell Manufacturing Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and

place of business in the city of Jersey City, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Stowell Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on

for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is, and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the city of Jersey City, in said State, and now, and continuously since 1892 engaged in the manufacture of composition felt-base roofing material which is hereinafter referred to as asphalt roofing and in the sale and shipment thereof from respondent's place of manufacture to the purchasers thereof in the several States of the United States in direct competition with numerous persons, copartnerships and corporations similarly engaged. For upwards of twenty years asphalt roofing has been manufactured by many other manufacturers and there are now over fifty concerns manufacturing such asphalt roofing in the United States. Respondent has been, and is, in direct competition with all of these concerns in the sale of such roofing. Respondent's aggregate sales of asphalt roofing for a period of ten years prior to January 1, 1920, exceeded $1,000,000; for a period of five years prior to January 1, 1920, exceeded $900,000; for the period of one year prior to January 1, 1920, exceeded $350,000; and for a period of one year prior to January 1, 1921, as estimated by respondent, exceeded $500,000.

PAR. 2. The asphalt roofing above referred to as commonly made by respondent and the several manufacturers thereof was and is composed of a base of felt made of rag waste and of other materials impregnated and coated with asphalt. Respondent, in the conduct of its business, applies and affixes labels to, and issues samples of, asphalt roofing manufactured by it, such samples consisting of small pieces of the roofing itself, which are enclosed in printed paper of cardboard covers; respondent also issues printed circulars and other advertising matter, advertising such asphalt roofing; a portion of the samples, circulars and other advertising matter so issued is by respondent sent and distributed to persons who are or might be interested in the purchase and subsequent use of asphalt roofing, and large quantities thereof are by respondent sent to dealers and others who are or might be interested in the purchase and subsequent sale of such roofing to be used by them in such subsequent sale to other retail dealers or to the general purchasing public; and such samples, circulars and other advertising matter have reached, and now reach

the general purchasing public through such means. For many years last past it has been the practice of several but not of all of the manufacturers of asphalt roofing to designate and describe the same as "rubber" roofing, notwithstanding the fact that there was and is no rubber used in the composition of such roofing; many of the said manufacturers who have heretofore used the term "rubber" to designate and describe such asphalt roofing have within the past three years, because of its ambiguous and misleading character, ceased to use the term "rubber"; the respondent in said labels, circulars and other advertising matter and until about the month of January, 1920, in said sample covers, likewise used the word or term "rubber" to characterize and describe the asphalt roofing manufactured by it, notwithstanding the fact that such roofing was not and is not composed either in whole or in part of rubber, examples of such use by respondent of the word "rubber" being the branding and advertising of its said roofing as "Durite Rubber Roofing" and "Eureka Rubber Roofing"; it was and is intended by respondent that the labels, sample covers, circulars and other advertising matter hereinbefore and hereinafter referred to and the contents thereof and statements therein should reach the general purchasing public in the manner hereinbefore described for the purpose of increasing the sale of respondent's roofing and inducing such purchasing public to choose and purchase the roofing manufactured by respondent in preference to the roofing of competitors of respondent; and said labels, sample covers, circulars and other advertising matter and the contents thereof and statements therein did induce the general public to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

The use by respondent of the word "rubber" as above described is a false and misleading characterization, description and designation of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed wholly or partly of rubber and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is, in fact, purchasing roofing composed wholly or partly of rubber; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

PAR. 3. Asphalt roofing, as commonly made by respondent and the several manufacturers thereof, always consisted and consists of one single piece of felt impregnated and coated as hereinbefore set forth; it is offered for sale and sold by respondent and is cus-

tomarily offered for sale and sold by other manufacturers thereof in rolls which contain approximately 108 square feet, this quantity being customarily called by such manufacturers, and in the roofing trade generally, a "square"; it is customarily offered for sale and sold by respondent, and by the other manufacturers thereof, in at least three approximate weights of 35 pounds, 45 pounds, and 55 pounds per square; and the different weights or thicknesses of such roofing were and are made by using different weights and thicknesses of the single felt piece. For many years last past it has been the practice of several, but not all, of the manufacturers of asphalt roofing to designate and describe the different weights and thicknesses of such roofing by the terms "1 ply," "2 ply" and "3 ply," notwithstanding the fact that such roofing consisted of one ply, layer or thickness only and did not and does not consist of two or more plies, layers or thicknesses of felt, superimposed one upon the other and made into one piece by impregnating, binding, or otherwise fastening together such plies, layers or thicknesses; many of said manufacturers of such roofing who have heretofore used the terms "1 ply," "2 ply," and "3 ply" to designate and describe the different weights and thicknesses of such roofing have within the past three years, because of their ambiguous and misleading character, ceased to use the terms "1 ply," "2 ply" and "3 ply"; the respondent for the past several years in the labels, sample covers, circulars and other advertising matter hereinbefore referred to, likewise used the terms "1 ply," "2 ply" and "3 ply" to designate and describe the different weights and thicknesses of the asphalt roofing manufactured and sold by it, notwithstanding the fact that such roofing consisted of one single piece of felt impregnated and coated as aforesaid and not of two or more plies, layers and thicknesses or felt superimposed one upon the other and made into one piece.

The use by respondent of the words "2 ply" and "3 ply," as above described, is a false and misleading designation and description of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing, it is, in fact, purchasing a roofing composed of two, or more, plies, layers or thicknesses; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the statement of facts agreed upon between counsel for the Commission and the respondent, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Stowell Manufacturing Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the words "2 ply" or "3 ply," alone or in combination with any other word or words to describe its products: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with.

[1] Made as of June 16, 1924.

The Commission also made similar findings and orders, as of February 29, 1924, in the following cases:

INTERNATIONAL ROOFING MANUFACTURING Co. of Chicago, Ill., Docket 480, the aggregate sales of which company's asphalt roofing, according to the findings, exceeded $400,000 a year for the two years preceding 1921. Examples of the use of the word rubber: "International Star Rubber Roofing" and "International Mica Rubber Roofing." Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Clark McKircher* of McKircher & Link of New York, N. Y., for respondent.

H. W. JOHNS-MANVILLE Co. of New York City, Docket 483, the aggregate sales of which company's asphalt roofing, according to the findings, for the six years prior to January 1, 1920, exceeded $7,000,000, and for the year prior to January 1, 1920, exceeded $2,000,000. Examples of the use of the word rubber: "Pilot Rubber Type Roofing," "Regal Roofing, The Best All-around Rubber Type Roofing" and the "better grade 'rubber' roofing." Appearances: *Mr. John R. Dowlan* for the Commission.

H. F. WATSON Co. of Erie, Pa., Docket 488, the aggregate sales of which company's asphalt roofing, according to the findings, have exceeded $500,000 a year for the five years preceding April 1, 1921. Examples of the use of the word rubber: "Rubber Roofing" and "Reliable Rubber Roofing." Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Clark McKircher* of McKircher & Link of New York, N. Y., for respondent.

FEDERAL TRADE COMMISSION

v.

BECKMAN-DAWSON ROOFING COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 477—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of composition felt-base roofing material containing no rubber and made in varying weights and thicknesses; in accordance with the practice of some manufacturers in so designating their smooth qualifying roofing to distinguish the same from other roofing not so designated, advertised, labeled and sold the same as "rubber" roofing, and, in accordance with the practice of manufacturers and dealers, as one-ply, two-ply, and three-ply, as the case might be; with the capacity and tendency to mislead part of the trading and the general purchasing public in reference to the composition and manufacture of such roofing, notwithstanding the absence of any intention so to do, and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses, respectively:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

Mr. Edwin P. Grosvenor, of Cadwalader, Wickersham & Taft of New York City, for respondent.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Beckman-Dawson Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Beckman-Dawson Company, is and at all times hereinafter mentioned, was a corporation organ-

ized, existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Beckman-Dawson Roofing Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. The respondent having entered

its appearance and filed its answer herein, a stipulation as to the facts was entered into by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation, organized under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material, which it sells and ships in commerce to purchasers in other States of the United States and the District of Columbia, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The above-mentioned composition felt-base roofing material, which is hereinafter referred to as asphalt roofing, as commonly and customarily made by the several manufacturers thereof, including respondent, is composed of a base of felt made of rag waste and other materials, impregnated and coated with asphalt. Respondent, in connection with the marketing of its said product and to advertise and distribute the same, uses samples of the various kinds and brands of its said asphalt roofing, such samples being enclosed in a printed or cardboard cover, and respondent also uses printed circulars and other printed matter which it distributes to jobbers, retail dealers and others who might be interested in the purchase or use of said roofing, and in addition thereto respondent places upon its said product labels descriptive thereof. For many years prior to the filing of the complaint herein, it has been the custom and practice of several but not all of the manufacturers of asphalt roofing to designate and describe a certain grade or type of said asphalt roofing, to wit, a smooth type as "Rubber Roofing," to distinguish that smooth type of roofing from the other types of roofing not so finished but surfaced with slate or other mineral substances, notwithstanding the fact that there was and is no rubber used in the composition of the above-described roofing; in like manner, the respondent, prior to the filing of the complaint herein branded, labeled and described its said asphalt roofing as "rubber" roofing and in so doing displayed or caused to be displayed upon its said labels and in various circulars and other advertising matter the name or term "rubber" in connection with its said asphalt roofing.

The use by respondent of the word "rubber," as above described, is a false and misleading characterization, designation and description of its asphalt roofing and, notwithstanding the absence of any intention on the part of the respondent to deceive, has the tendency and capacity to create a false impression and belief among the roofing trade and general public that respondent's said asphalt roofing and other roofing of the same type is composed wholly or partly of rubber, and to deceive and mislead the general purchasing public into the belief that in purchasing respondent's said asphalt roofing it is in fact purchasing a roofing composed wholly or partly of rubber.

PAR. 3. The above-described asphalt roofing as commonly made by the several manufacturers thereof, including respondent, consists of one single piece of felt impregnated and coated, as aforesaid, and not of two or more plies, layers or thicknesses, superimposed one upon the other and made into one piece, the terms "one, two, and three ply" being applied simply to the different thicknesses and weights of such roofing; respondent's said asphalt roofing has always consisted of one single piece of felt, impregnated and coated as hereinbefore set out, made in differing weights and thicknesses to which respondent applies the terms, "one, two and three ply"; likewise for a number of years last past and prior to the filing of the complaint herein it has been the practice of manufacturers of and dealers in asphalt roofing to designate and describe the different weights or thicknesses of such roofing by the use of the terms "one-ply," "two-ply," and "three-ply," notwithstanding the fact that such roofing consists of one-ply, layer or thickness only, and respondent followed that practice as hereinbefore set out and branded, labeled and described its said asphalt roofing as "one-ply," "two-ply," and "three-ply."

The use by the respondent of the words, "two-ply" and "three-ply," as above described, is a false and misleading designation and description of its asphalt roofing and, notwithstanding the absence of any intention on the part of respondent to deceive has the tendency and capacity to create a false impression and belief among the roofing trade and general public that respondent's said roofing and other roofing of the same type consists of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public into the belief that in purchasing respondent's said roofing it is in fact purchasing a roofing that consists of two or more plies, layers or thicknesses.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the stipulation as to the facts entered into by counsel for the Commission and the respondent, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Beckman-Dawson Roofing Company, its agents, servants, employees and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber," alone or in combination with any other word or words to describe its product: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand, for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the terms "two-ply" or "three-ply," alone or in combination with any words or terms to describe its product: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing, or (c) on labels, covers or wrappers for, or on rolls of, such roofing.

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with.

[1] Made as of June 16, 1924.

The Commission as of the same date also made similar findings and orders in the following cases:

AMALGAMATED ROOFING Co. of Chicago, Ill. Docket 481. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

THE CHATFIELD MANUFACTURING Co. of Chicago, Ill. Docket 482. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

KEYSTONE ROOFING MANUFACTURING Co. of York, Pa. Docket 484. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

THE PHILIP CAREY Co. of Lockland, Ohio.[1] Docket 487. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

THE PARAFFINE COMPANIES, INC. of San Francisco, Cal. Docket 489. Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, of New York City, for respondent.

---

[1] This company is not The Philip Carey Manufacturing Co.

FEDERAL TRADE COMMISSION

v.

DURABLE ROOFING MANUFACTURING COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 478—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a composition felt-base roofing material containing no rubber and made in varying weights and thicknesses; respectively described, branded and labeled the same as "rubber" roofing and as one ply, two ply, and three ply, as the case might be, in accordance with the practice of some manufacturers but contrary to that of many others who had discontinued the same; with the capacity and tendency to mislead part of the trade and the general purchasing public in reference to the composition and manufacture of such roofing, and into believing that in purchasing the roofing of said corporation it was in fact buying a product composed wholly or partly of rubber and consisting of two or three plies, layers, or thicknesses, respectively, and with the intent and effect of inducing the purchase thereof in preference to the products of competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Durable Roofing Manufacturing Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Durable Roofing Manufacturing Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, having its principal office and place

of business in the city of Portland, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the word "Rubber" in its labels, advertising and other printed matter to characterize and describe its said product; that said characterization or description is false and misleading in that said product contains no rubber in its composition, and has the effect of creating an impression and belief among the trade and general public, that respondent's said product is composed wholly or partly of rubber and the further effect of inducing purchasers to give to said product an undue preference over similar products of competitors that are not so characterized and described.

PAR. 3. That for a period of more than two years last past the respondent, in the conduct of its business of manufacturing, selling and shipping composition felt-base roofing material in interstate commerce as aforesaid, has used the terms "one-ply," "two-ply," and "three-ply" to designate and describe the different degrees of thickness of its said product; that said designation or description is false and misleading in that said product in its different degrees of thickness consists of but one layer or ply, and has the effect of creating an impression and belief among the trade and general public that respondent's said product consists of so many separate layers of felt, and the further effect of inducing purchasers to give the said product an undue preference over similar products of competitors that are not so designated and described.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Durable Roofing Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a stipulation as to the facts was entered into by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this

proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Durable Roofing Manufacturing Company, is and at all times hereinafter mentioned was a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, having its principal office and place of business in the city of Portland, in said State, now and for more than two years last past engaged in the manufacture and sale of a composition felt-base roofing material, which is hereinafter referred to as asphalt roofing, and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States, and the District of Columbia, in direct competition with numerous other persons, copartnerships and corporations similarly engaged.

PAR. 2. The asphalt roofing above referred to as commonly made by respondent and the several manufacturers thereof was and is composed of a base of felt made of rag waste and other materials impregnated and coated with asphalt; and said asphalt roofing is customarily offered for sale and sold by respondent and other manufacturers thereof and dealers therein, in rolls which contain approximately 108 square feet each, such quantity being customarily called by the manufacturers thereof, and in the roofing trade generally, a "square"; respondent and the other manufacturers thereof customarily apply and affix to the rolls of such roofing a printed label designating and describing such roofing and containing the trade name or brand under which such roofing is intended to be, and is, sold to and purchased by the trade and the purchasing public and ultimate consumers. Respondent, in the conduct of its business, and to market and distribute the asphalt roofing so manufactured and sold by it in commerce among the several States as aforesaid, sells a portion of its rolls of such roofing with labels thereon which contain its own trade names and brands, such sales being made to consumers who use the same and to dealers by whom the same is resold under said labels to consumers, and the remainder of its rolls of such roofing is sold by respondent with labels thereon which contain other and different trade names and brands which are selected or designated by the respective purchasers thereof, such sales being made to dealers by whom the same is resold under said labels to consumers and others; it was and is intended by respondent that said labels and the contents thereof and statements therein should in

such manner reach the general purchasing public, for the purpose of increasing the sale of such asphalt roofing so manufactured and sold by respondent and for the purpose of inducing such public to choose and purchase such roofing in preference to roofing manufactured and sold by competitors of respondent; and said labels and the contents thereof and statements therein did and do in this manner reach the general purchasing public, and did and do induce a substantial portion thereof to choose and purchase the asphalt roofing manufactured by respondent, in preference to roofing manufactured and sold by competitors of respondent. For many years last past it has been the practice of several but not of all of the manufacturers of asphalt roofing to designate and describe the same as "rubber" roofing, notwithstanding the fact that there was and is no rubber used in the composition of such roofing; many of the said manufacturers who have heretofore used the term "rubber" to designate and describe such asphalt roofing have within the past three years, because of its ambiguous and misleading character, ceased to use the term "rubber"; likewise the respondent, for more than two years prior to the service upon it on December 17, 1919, of the complaint in this proceeding, upon said labels which were so selected or designated by the respective purchasers of its said asphalt roofing, displayed and used the name or term "rubber" in connection with other words, to describe and refer to, and as part of trade names and brands for, the roofing so sold, examples of such use of the word "rubber" being the describing, branding and labeling of such roofing as "Galvanized Rubber Roofing, Monogram Brand," and "Standard Rubber Roofing."

The use by respondents of the word "rubber" as above described is a false and misleading characterization, description and designation of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed wholly or partly of rubber and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing it is, in fact, purchasing roofing composed wholly or partly of rubber; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

PAR. 3. Asphalt roofing, as commonly made by respondent and the several manufacturers thereof, always consisted and consists of one single piece of felt impregnated and coated as hereinbefore set

forth; it is customarily offered for sale and sold by respondent, and by the other manufacturers thereof, in at least three approximate weights of 35 pounds, 45 pounds and 55 pounds per square; and the different weights or thicknesses of such roofing were and are made by using different weights and thicknesses of the single felt piece. For many years last past it has been the practice of several, but not all, of the manufacturers of asphalt roofing to designate and describe the different weights and thicknesses of such roofing by the terms "one ply," "two ply," and "three ply," notwithstanding the fact that such roofing consisted of one ply, layer or thickness only and did not and does not consist of two or more plies, layers of thicknesses of felt, superimposed one upon the other and made into one piece by impregnating, binding, or otherwise fastening together such plies, layers or thicknesses; many of said manufacturers of such roofing who have heretofore used the terms "one ply," "two ply," and "three ply" to designate and describe the different weights and thicknesses of such roofing, have within the past three years, because of their ambiguous and misleading character, ceased to use the terms "one ply," two ply," and "three ply"; the respondent for more than two years prior to the service upon it, on December 17, 1919, of the complaint in this proceeding in the labels hereinbefore referred to and in other advertising matter made it a practice to likewise use the terms "one ply," "two ply," and "three ply" to designate and describe the different weights and thicknesses of the asphalt roofing manufactured and sold by it, notwithstanding the fact that such roofing consisted of one single piece of felt impregnated and coated as aforesaid, and not of two or more plies, layers or thicknesses of felt superimposed one upon the other and made into one piece.

The use by respondent of the words "two ply" and "three ply," as above described, is a false and misleading designation and description of its asphalt roofing; has the tendency and capacity to create a false impression and belief among part of the roofing trade and the general public that respondent's said roofing and other roofing of the same type is composed of two or more plies, layers or thicknesses, and to deceive and mislead the general purchasing public and part of the trade into the belief that in purchasing respondent's said roofing, it is, in fact, purchasing a roofing composed of two or more plies, layers or thicknesses; and did, in fact, materially assist in causing prospective purchasers of roofing to choose and purchase respondent's said roofing in preference to the roofing of competitors of respondent.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define, its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the stipulation as to the facts entered into by counsel for the Commission and the respondent, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, that respondent, Durable Roofing Manufacturing Company, its agents, servants, employees, and representatives do cease and desist—

From employing or using in connection with the sale of roofing material not composed of rubber the word "Rubber" alone or in combination with any other word or words to describe its product: (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing; and

From employing or using in connection with the sale of roofing material not composed of two or more plies, layers or thicknesses the terms "two ply" or "three ply," alone or in combination with any other words or terms to describe its product; (a) in circulars, booklets or other advertising matter; or (b) as, or in connection with, or as part of, a trade name or brand for such roofing; or (c) on labels, covers or wrappers for, or on rolls of, such roofing.

[1] Order modified as of June 16, 1924.

FEDERAL TRADE COMMISSION

v.

P. LORILLARD COMPANY, INC., THE CINCINNATI WHOLESALE TOBACCO ASSOCIATION ET AL.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 909—February 29, 1924.

SYLLABUS.

Where the tobacco wholesalers in a certain locality, at the instigation, and in response to the advice and coercion, and with the cooperation, of one of the largest tobacco manufacturers, without a continual supply of which manufacturer's products, dealt in by them, it was difficult, because of the demand therefor, for a tobacco dealer successfully to conduct his business;

(*a*) Agreed upon the discount from list prices to be observed and maintained by them in selling the products of said manufacturer, and, through an association which they organized, upon discounts from list prices on tobacco products, to be accorded by them to subjobbers and retail dealers, and agreed not to allow a discount greater than an agreed figure to price cutting subjobbers or those of their own number, who had been discontinued as direct customers by a manufacturer, for price cutting; and generally maintained the discounts so agreed upon; and

(*b*) Struck from a list of subjobbers theretofore adopted by them as comprising those entitled to the regular subjobber discounts which they had agreed upon, the name of certain subjobbers to whom they thereafter allowed only the smaller discount as above set forth; and

Where a tobacco manufacturer, as aforesaid, in harmony with its efforts to secure general observances throughout the country of what it regarded as satisfactory resale prices on its products,

(*c*) Promised, and lent its assistance and cooperation in the foregoing undertaking through circular letters defending and advocating such a plan and through threatening to cut off, and cutting off, price cutters, and jobbers who would not cooperate with its other customers in said undertaking;

With the result that wholesale dealers in the territory concerned were constrained to observe prices fixed as above set forth, and competition in the wholesaling of tobacco products, and between subjobbers and retailers, in such territory, was suppressed and hindered, and with a tendency thereby to obstruct the free and natural flow of commerce:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith and *Mr. Edwin B. Haas* for the Commission.

Mr. W. B. Bell and *Mr. Charles Caldwell* of New York City and *Mr. H. H. Shelton* of Washington, D. C., for P. Lorillard Co., Inc.

Mr. Alfred G. Allen of Cincinnati, Ohio and *Mr. Charles S. Moore* of Taylor, Caskey & Moore of Washington, D. C., for

respondent wholesalers (with the exception of Janzen Grocery Co., and its officers).

Dorger & Dorger of Cincinnati, Ohio, for Janzen Grocery Co., and the officers thereof.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the various persons, corporate and individual, mentioned in the caption hereof and more particularly hereinafter described and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, P. Lorillard Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Jersey City, in said State, and with various factories, some located in the State of New Jersey, aforesaid, and others in different other States of the United States; it was at all times hereinafter mentioned, and still is, engaged in the business of manufacturing cigars, cigarettes and other tobacco products and in selling the same throughout the United States, causing its products, when so sold, to be transported from the point of manufacture in one State to purchasers located in other States of the United States, the Territories thereof and the District of Columbia, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said cigars, cigarettes and other tobacco products manufactured by said respondent, between and among the various States and Territories of the United States and the District of Columbia; the said respondent is now, and was at all times hereinafter mentioned, one of the largest manufacturers and sellers of cigars, cigarettes and other tobacco products in the United States; many of its cigars, cigarettes and other tobacco products are now, and have been for many years, sold under well known trade names or brands, without a continuous supply of which it is difficult, because of the buyer demand therefor, for a wholesaler or retailer in cigars, cigarettes and other tobacco products successfully to conduct his business.

PAR. 2. The respondent, The Cincinnati Wholesale Tobacco Association, is a voluntary, unincorporated organization of tobacco jobbers. Its membership consists of, and since its organization its membership has consisted of, the following corporations, firms and persons, viz:

Respondent, Henry Straus, a partnership composed of respondent, David Straus, respondent Robert Straus, and respondent Charles L. Straus; respondent, J. B. Moos Company, a corporation of which the following are officers: respondent, D. J. Brown, President, respondent R. C. Christie, Vice President, respondent E. D. Stickle, Secretary and Treasurer; respondent, Janszen Grocery Company, a corporation, of which corporation the following are officers: respondent, August Janszen, Sr., President, respondent Joseph A. Janszen, Vice President, respondent, Frank Harpenau, Treasurer, and respondent, August Janszen, Jr., Secretary; respondent, I. Keilson & Son, a partnership composed of respondent, I. Keilson, respondent, Dan Keilson, and respondent Alexander Schwartz; respondent, M. & L. Young, a partnership composed of respondent, Louis Young, and respondent, Minnie Young Casey; respondent, G. W. Bickett's Sons, a partnership composed of respondent, G. W. Bickett, and respondent, Ray F. W. Bickett; respondent, Louis C. Weisbrodt; respondent, G. O. Fennell; respondent, John C. Davis; respondent, James E. Cosgrove; respondent, George W. Harriman; respondent, George Schulten Sons, a partnership composed of respondent, John H. Schulten, and respondent, Edwin B. Schulten; respondent, J. C. Nienaber; respondent, H. Haebe; respondent, C. Bosken.

The officers of the respondent, The Cincinnati Wholesale Tobacco Association, are, and have been since its organization, respondent, J. E. Cruse, President, respondent, G. O. Fennell, Vice President, respondent, J. C. Nienaber, Vice President, respondent, John H. Dickerson, Secretary, and respondent, Louis Young, Treasurer.

Each and every one of the corporations, firms, partnerships and persons (excepting James E. Cosgrove and J. C. Nienaber), constituting the membership and organization of the Cincinnati Wholesale Tobacco Association, is now and was at all times hereinafter mentioned, engaged in the city of Cincinnati, State of Ohio, in the business of selling cigars, cigarettes and other tobacco products to wholesale and retail dealers in such products in the State of Ohio and other States in the United States, shipping such cigars, cigarettes and other tobacco products, when sold, from their respective places of business in Cincinnati aforesaid to the purchasers thereof in Ohio and in other States and Territories of the United States and the District of Columbia, and there is now and was at all times

hereinafter mentioned a constant current of trade and commerce in such cigars, cigarettes and other tobacco products between the State of Ohio and other States of the United States, particularly between the city of Cincinnati and therefrom to and into other States of the United States.

The respondents, James E. Cosgrove and J. C. Nienaber, are now and at all times hereinafter mentioned were engaged in the city of Covington, State of Kentucky, in the business of selling cigars, cigarettes and other tobacco products at wholesale to wholesale and retail dealers in such products in the State of Kentucky and other States of the United States, shipping such cigars, cigarettes and other tobacco products, when sold, from their respective places of business in Covington aforesaid to the purchasers thereof in Kentucky and other States and Territories of the United States and the District of Columbia, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in such cigars, cigarettes and other tobacco products between the State of Kentucky and other States of the United States, and particularly between the city of Covington and therefrom to and into other States of the United States.

The said respondents, James E. Cosgrove and J. C. Nienaber, sold, at all times hereinafter mentioned, cigars, cigarettes and other tobacco products in Cincinnati, shipping the same from Covington, Kentucky, to Cincinnati; while the other respondent members of the Cincinnati Wholesale Tobacco Association sold at all times hereinafter mentioned cigars, cigarettes and other tobacco products in Covington, Kentucky, shipping such products from their respective places of business in Cincinnati aforesaid.

PAR. 3. Each and every one of the corporations, firms, partnerships and persons constituting the membership and organization of the respondent, The Cincinnati Wholesale Tobacco Association, now deals in and at all times hereinafter mentioned dealt in, among others, the products of the respondent, P. Lorillard Company, Inc., which said respondent company sold its products to the respondent members of The Cincinnati Wholesale Tobacco Association by means of orders for such products solicited from the members of said association, which said orders were accepted by officials of said P. Lorillard Company, Inc., located in States other than the States of Ohio and Kentucky, and were filled by shipping such products from factories located outside the States of Ohio and Kentucky to such members at their respective places of business in the States of Ohio and Kentucky aforesaid.

PAR. 4. The respondents named in paragraph 2 hereof, in the year 1921, for the purpose and with the effect of eliminating com-

petition among themselves and among subjobbers of cigars, cigarettes, and other tobacco products, and among retailers thereof, and among manufacturers thereof, and for the purpose and with the effect of restraining interstate commerce in the purchase and sale of cigars and cigarettes and other tobacco products, unlawfully entered into an agreement, understanding and conspiracy among themselves to fix, through the Cincinnati Wholesale Tobacco Association, respondent, and as members thereof, uniform prices at which cigars, cigarettes and other tobacco products handled by them should thereafter be sold by them, and pursuant to said agreement, understanding and conspiracy, said respondents did, in the year 1921, fix, abide by and adhere to the prices so fixed and agreed upon, and have, since the year 1921, pursuant to the agreement, understanding and conspiracy aforesaid, fixed, abided by and adhered to the prices so fixed and agreed upon.

PAR. 5. The respondent, P. Lorillard Company, Inc., in the year 1921, for the purpose and with the effect of eliminating competition among the respondents named in paragraph 2 hereof, and among subjobbers of its cigars, cigarettes and other tobacco products, and among retailers thereof in the territory covered by the said respondents named in paragraph 2 hereof, did, in the year 1921, unlawfully enter into an agreement, understanding and conspiracy with the said respondents named in paragraph 2 hereof, to fix uniform prices at which its products should thereafter be sold by them, the said respondents named in paragraph 2 hereof, and pursuant to said agreement, understanding and conspiracy, respondent did, in the year 1921, fix, abide by and adhere to the prices so fixed and agreed upon and have since the year 1921, pursuant to the agreement, understanding and conspiracy aforesaid, fixed, abided by and adhered to the prices so fixed and agreed upon.

PAR. 6. For the purpose of carrying out the agreement, understanding and conspiracy described in paragraph 5 hereof, the said P. Lorillard Company, Inc., agreed to and did discontinue and refuse in the year 1921 and since the year 1921 has discontinued and refused to sell its products to certain members of the Cincinnati Wholesale Tobacco Association and their competitors because such members and such competitors resold such products to subjobbers and/or retailers thereof at less than the prices fixed and agreed upon as described in paragraph 5 hereof; and in pursuance of the agreement, understanding and conspiracy aforesaid, the said P. Lorillard Company, Inc., refused to resume selling such members of the Cincinnati Wholesale Tobacco Association except upon the condition that said members would cease selling such products to subjobbers

and/or retailers thereof at prices less than those prices fixed and agreed upon as described in paragraph 5 hereof.

PAR. 7. The respondent, P. Lorillard Company, Inc., did, in the year 1921, for the purpose and with the effect of eliminating competition among the said respondents named in Paragraph Two hereof and among subjobbers and retailers of its cigars, cigarettes and other tobacco products in the territory covered by the respondents named in paragraph 2 hereof, and for the purpose and with the effect of restraining interstate commerce in the purchase and in the sale of its cigars, cigarettes and other tobacco products unlawfully entered into an agreement, understanding and conspiracy with the respondents named in paragraph 2 hereof to fix the prices at which the products of said P. Lorillard Company, Inc. should be resold by subjobbers and retailers purchasing the same from the respondents mentioned in paragraph 2 hereof, and pursuant to the said agreement, understanding and conspiracy, the respondents did, in the year 1921, fix, and since the year 1921 have fixed, the prices at which subjobbers and retailers resold and should resell such tobacco products.

PAR. 8. For the purpose of carrying out the agreement, understanding and conspiracy described in paragraph 7 hereof, the said respondent, P. Lorillard Company, Inc., in the year 1921, agreed with respondents named in paragraph 2 hereof to discontinue and refuse to sell, and, in the year 1921 and since the year 1921, has discontinued and refused to sell its products to certain members of the Cincinnati Wholesale Tobacco Association and their competitors because such members and such competitors resold such products to subjobbers and/or retailers thereof who would not and/or who did not resell the said products at the prices fixed and agreed upon as described in paragraph 7 hereof; and in pursuance of the agreement, understanding and conspiracy aforesaid, said P. Lorillard Company, Inc. has refused to resume selling such members of the Cincinnati Wholesale Tobacco Association except upon the condition that said members would cease selling such products to subjobbers and/or retailers thereof who would not and/or who did not resell the said products at the prices fixed and agreed upon as described in paragraph 7 hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, P. Lorillard Company, Inc., The Cincinnati Wholesale

Tobacco Association, an unincorporated organization, its officers, J. E. Cruse, President, G. O. Fennell, Vice President, J. C. Nienaber, Vice President, John H. Dickerson, Secretary, and its members as follows: David Straus, Robert Straus and Charles L. Straus, partners trading as Henry Straus, J. B. Moos Company, a corporation, and its following officers, D. J. Brown, President, R. C. Christie, Vice President, E. D. Stickle, Secretary and Treasurer; Janszen Grocery Company, a corporation, and its following officers; August Janszen, Sr., President, Joseph A. Janszen, Vice President, Frank Harpenau, Treasurer, August Janszen, Jr., Secretary; I. Keilson, Dan Keilson and Alexander Schwartz, partners, trading as I. Keilson & Son; Minnie Young Casey, trading as M. & L. Young; G. W. Bickett and Ray F. W. Bickett, partners, trading as G. W. Bickett's Son; Louis G. Weisbrodt; G. O. Fennell; John C. Davis; James E. Cosgrove; George W. Harriman; John H. Schulten and Edwin E. Schulten, partners, trading as George Schulten Sons; J. C. Nienaber; H. Haebe and C. Bosken, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent P. Lorillard Company, Inc., filed its answer denying the use of the methods of competition charged in the complaint; the respondents Janszen Grocery Company, August Janszen, Sr., Joseph A. Janszen, Frank Harpenau and August Janszen, Jr., filed their joint answer denying the use by them and by each of them of the methods of competition charged in the complaint; respondent James E. Cosgrove on September 20, 1922, filed his answer admitting that the respondents hereinabove mentioned, excepting P. Lorillard Company, Inc., in June, 1921, by agreement among themselves fixed resale prices on cigarettes and other tobacco products handled by them and each of them and that for about two months after June, 1921, the said respondents maintained the resale prices fixed by such agreement.

After the filing of the said answer of the said respondent Cosgrove, he filed on October 28, 1922, with the Federal Trade Commission, through his attorneys, a motion to withdraw his said answer and to be permitted to file in substitution thereof a formal answer, which said motion upon due consideration by the said Commission was denied by its order dated November 1, 1922; all of the other said respondents filed their joint answer denying the use by them or any of them of the methods of competition charged in the complaint.

Thereupon hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and upon be-

half of the respondents before George McCorkle, Esq., an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and having duly considered the record (the testimony having been reduced to writing and filed in the office of said Commission) and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, P. Lorillard Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Jersey City, in said State, and with various factories, some located in the State of New Jersey aforesaid and others in different other States of the United States; it was at all times hereinafter mentioned and still is engaged in the business of manufacturing cigars, cigarettes and other tobacco products and in selling the same throughout the United States, causing its products, when so sold, to be transported from the point of manufacture in one State to purchasers located in other States of the United States, the Territories thereof and the District of Columbia, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said cigars, cigarettes, and other tobacco products manufactured by said respondents, between and among the various States and Territories of the United States and the District of Columbia; the said respondent is now and was at all times hereinafter mentioned one of the largest manufacturers and sellers of cigars, cigarettes and other tobacco products in the United States; many of its cigars, cigarettes and other tobacco products are now, and have been for many years sold under well known trade names or brands, without a continual supply of which it is difficult, because of the demand therefor, for a wholesaler or retailer in cigars, cigarettes and other tobacco products successfully to conduct his business.

PAR. 2. The respondent, The Cincinnati Wholesale Tobacco Association, was a voluntary, unincorporated organization of tobacco jobbers. It was organized early in June, 1921, and existed and held meetings at least until October 12, 1921, at or about which time the Federal Trade Commission made the preliminary investigation upon which were based the charges contained in the complaint in the proceeding.

The membership of the said respondent, The Cincinnati Wholesale Tobacco Association, during the existence of the said Association consisted of the following corporations, firms, and persons, viz:

Respondent Henry Straus, a partnership composed of respondent, David Straus, respondent Robert Straus, and respondent Charles L. Straus; Respondent J. B. Moos Company, a corporation, of which the following were officers during the period of the existence of the said Association: respondent D. J. Brown, President, respondent R. C. Christie, Vice President, respondent E. D. Stickle, Secretary and Treasurer; Respondent, Janszen Grocery Company, a corporation, of which the following were officers during the period of the existence of the said Association: respondent, August Janszen, Sr., President, respondent, Joseph A. Janszen, Vice President, respondent Frank Harpenau, Treasurer, and respondent, August Janszen, Jr., Secretary; Respondent, I. Keilson & Son, a partnership composed of respondent, I. Keilson, respondent, Dan Keilson and respondent, Alexander Schwartz; Respondent, M. & L. Young, a partnership composed of Minnie Young Casey, respondent, and Louis Young, the latter of whom died some time in the period intervening between the dissolution of the respondent Association and the issuance of the complaint herein; Respondent G. W. Bickett's Sons, a partnership composed of respondent, G. W. Bickett, and respondent, Ray F. W. Bickett; Respondent, Louis C. Weisbrodt; Respondent, G. O. Fennell; Respondent, John C. Davis; Respondent, James E. Cosgrove; Respondent, George W. Harriman; Respondent, George Schulten Sons, a partnership composed of respondent, John H. Schulten, and respondent, Edwin B. Schulten; Respondent, J. C. Nienaber; Respondent, H. Haebe; Respondent, C. Bosken.

The officers of the respondent, The Cincinnati Wholesale Tobacco Association during its entire existence, were as follows: Respondent, J. E. Cruse, President, respondent, G. O. Fennell, Vice President, respondent J. C. Nienaber, Vice President, respondent, John H. Dickerson, Secretary, and said Louis Young, Treasurer.

Each and every one of the corporations, firms, partnerships and persons (excepting James E. Cosgrove and J. C. Nienaber) constituting the membership and organization of the Cincinnati Wholesale Tobacco Association, is now and was at all times hereinafter mentioned, engaged in the City of Cincinnati, State of Ohio, in the business of selling cigars, cigarettes, and other tobacco products to wholesale and retail dealers in such products in the State of Ohio and other States in the United States, shipping such cigars, cigarettes, and other tobacco products, when sold, from their respective places of business in Cincinnati aforesaid to the purchasers thereof in Ohio and in other States of the United States, and there is now and was at all times hereinafter mentioned a constant current of

trade and commerce in such cigars, cigarettes and other tobacco products between the State of Ohio and other States of the United States, particularly between the city of Cincinnati and therefrom to and into other States of the United States.

The respondents, James E. Cosgrove and J. C. Nienaber, are now and at all times hereinafter mentioned were engaged in the city of Covington, State of Kentucky, in the business of selling cigars, cigarettes and other tobacco products at wholesale to wholesale and retail dealers in such products in the State of Kentucky and other States of the United States, shipping such cigars, cigarettes and other tobacco products, when sold, from their respective places of business in Covington aforesaid to the purchasers thereof in Kentucky and other States of the United States, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in such cigars, cigarettes and other tobacco products between the State of Kentucky and other States of the United States, and particularly between the City of Covington and therefrom to and into other States of the United States.

The said respondents, James E. Cosgrove and J. C. Nienaber, sold, at all times hereinafter mentioned, cigars, cigarettes and other tobacco products in Cincinnati, shipping the same from Covington, Kentucky, to Cincinnati; while the other respondent members of the Cincinnati Wholesale Tobacco Association sold at all times hereinafter mentioned cigars, cigarettes and other tobacco products in Covington, Kentucky, shipping such products from their respective places of business in Cincinnati aforesaid.

PAR. 3. Each and every one of the corporations, firms, partnerships and persons constituting the membership and organization of the respondent, The Cincinnati Wholesale Tobacco Association, now deals in and at all times hereinafter mentioned dealt in, among others, the products of the respondent, P. Lorillard Company, Inc., which said respondent company sold and now sells its products to the respondent members of the Cincinnati Wholesale Tobacco Association by means of orders for such products solicited from the members of said association, which said orders were and are accepted by officials of said P. Lorillard Company, Inc., located in States other than the States of Ohio and Kentucky, and were and are filled by shipping such products from factories located outside the States of Ohio and Kentucky to such members at their respective places of business in the States of Ohio and Kentucky aforesaid.

PAR. 4. In the territory in which the respondent members of the Cincinnati Wholesale Tobacco Association sell cigarettes and other tobacco products, such cigarettes and other tobacco products have been distributed for many years by the manufacturers thereof, in-

cluding respondent P. Lorillard Company, Inc., through wholesalers; the manufacturers, including respondent P. Lorillard Company, Inc., sell only to wholesalers, who, in turn, resell to retailers and to subjobbers, the latter of whom, purchasing from wholesalers, resell to retailers; the consumer buys from the retailer. For many years it has been the practice in the tobacco business for manufacturers, including respondent P. Lorillard Company, Inc., to sell to their direct customers, namely, wholesalers, on the basis of such manufacturers' list prices. From these list prices the manufacturers, including respondent P. Lorillard Company, Inc., have allowed and do allow their direct customers a discount of 10 per cent and an additional discount of 2 per cent for cash within ten days; the wholesaler resells to the retailer and to the subjobber on the basis of the manufacturers' list prices, allowing to the subjobber and to the retailer discounts from these list prices, and in some cases the wholesaler sells to the retailer at the list price. The list price is less than the price intended to be charged by the retailer to the consumer, the difference between the intended price charged by the retailer to the consumer and the list price, or the list price less the discount allowed by the wholesaler, affords the retailer his margin for costs and profit. For a long time prior to June, 1921, the respondent named in paragraph 2 hereof, as constituting the membership and officers of the respondent association (all of whom will hereinafter be referred to as the members), had been allowing various discounts on resales of cigarettes and other tobacco products to retailers and to subjobbers. Such retailers and subjobbers, prior to June, 1921, had the advantage of competitive discounts on purchases from the members. These discounts ranged all of the way up to 10 per cent off such list prices.

PAR. 5. In May, 1921, prior to the organization of respondent, the Cincinnati Wholesale Tobacco Association (which will hereinafter be referred to as the association), the manager of the Scrap Department of respondent P. Lorillard Company, Inc. (which said P. Lorillard Company, Inc., will hereinafter be referred to as the Lorillard Company), by threats to various members that if they did not maintain a discount of 2 per cent from the list prices of the Lorillard Company's products, their orders for said company's products would thereafter be declined, and by suggestion to other members to maintain a discount of 2 per cent from the list prices of said company's products, induced the members by agreement among themselves, each with the other, in cooperation with the Lorillard Company, to establish a uniform discount at which the members would thereafter resell the Lorillard Company's products. The

Scrap Department of the Lorillard Company was the largest department of that company in the territory in which the members carried on their business. Said manager throughout 1921, had charge of the selling forces of the Lorillard Company in the following States: Michigan, Ohio, Indiana, Illinois, Wisconsin, Kentucky and Missouri. His immediate superior was D. H. Ball, who was at that time, namely, throughout 1921, and still is, located in New York City. Said D. H. Ball was throughout 1921 and still is vice president of the Lorillard Company, in charge of sales. Said manager was familiar with the business policies of the Lorillard Company and it was his duty to carry out such business policies in the territory under his jurisdiction. By reports made by him from time to time, the said manager kept the said D. H. Ball informed of his activities in his territory and of trade conditions in his territory.

PAR. 6. In May, 1921, said manager suggested to respondent Weisbrodt that Cincinnati jobbers get together and fix a uniform price on tobacco products. In May, 1921, said manager notified respondent Nienaber to maintain a 2 per cent discount on Lorillard Company's products. A short time prior to the organization of the association, said manager suggested to respondent I. Keilson that Cincinnati and Covington jobbers, by combination among themselves, maintain proper prices on Lorillard Company's goods and that if they did not do so, some of them would be cut off from the list of direct purchasers from the Lorillard Company.

Another of the respondents, Fennell, known to the trade and to the Lorillard Company as a price cutter, was warned in May, 1921, by said manager to cease cutting prices on Lorillard Company's products, and at that time the said Fennell was directed by the said manager to join with other customers of the Lorillard Company in Cincinnati, who, the said manager stated to the said Fennell, were going to put into general operation a discount of 2 per cent from the list price of the Lorillard Company's products. Said Fennell was, at that time, informed by the said manager that if he, the said Fennell, did not join with the other local customers of the Lorillard Company into putting into general operation a discount of 2 per cent, he, the said Fennell, could not continue as a direct purchaser from said company. Because of the threats made by the said manager to the said Fennell that if he, the said Fennell, did not cease price cutting and that if he did not maintain with the other local customers of the Lorillard Company a uniform discount of 2 per cent from the manufacturer's list prices, he would be cut off from the list of direct customers of the Lorillard Company, said Fennell joined the association. Another reason for his joining the association was the information conveyed to him by a division

salesman of the Lorillard Company that if he did not join he would not be able to continue to purchase the products of the Lorillard Company.

The said manager of the Scrap Department of the Lorillard Company reported to the said D. H. Ball that the members were going to attempt, by agreement among themselves, to fix uniform discounts which the members would thereafter allow on the resale of tobacco products, including those of the Lorillard Company. Upon the receipt by him of such reports, the said D. H. Ball, on May 20, 1921, wrote to the said Fennell and to respondent Janszen Grocery Company, another well-known price cutter, letters identical in language, as follows:

NEW YORK, *May 20, 1921.*

There seems to be a general movement throughout the country on the part of the jobbers—and we have recently been advised it has extended to Cincinnati—to secure a fair margin of profit for handling tobacco products.

This Company does not assume to tell you at what price you shall sell its merchandise after you have paid for it, but we are providing a trade allowance of 10% to the jobbers and it is exceedingly discouraging to find so many of them are inclined to give an excessive proportion of it away.

We believe the tobacco business as a whole—and the manufacturer's, jobber's and retailer's interest individually—is best served when our goods are being sold by each and every one of them at the prices intended.

We trust it will be your pleasure to cooperate with the movement on our line of merchandise.

May we not hear from you in reference to the above subject?

With kind regards, we beg to remain,

Yours very truly,

D. H. BALL, *Vice President.*

The said letters to respondents Fennel and the Janszen Grocery Company were intended by the said D. H. Ball, Vice President of the Lorillard Company, to suggest to the said Fennell and to the said Janszen Grocery Company, and the said letters did suggest to said Fennell and to said Janszen Grocery Company, that each of them confer with other tobacco jobbers in their territory concerning means and methods of cooperating with such other distributors of the Lorillard Company, and with that company, towards selling said company's products at the prices intended by said company; the said letters were also intended by the said D. H. Ball as requests and the said letters were requests to the said Fennell and to the Janszen Grocery Company not to block the efforts on the part of the Lorillard Company's other jobbers in Cincinnati, Ohio, and Covington, Kentucky, by combination among such other jobbers and with the Lorillard Company to secure prices satisfactory to such other jobbers and to the Lorillard Company on the resale of the Lorillard Company's products, and not to do anything to counteract

the efforts of such other jobbers in combination with each other and with the Lorillard Company to resell at prices satisfactory to the Lorillard Company and to such other jobbers.

PAR. 7. At the time the said manager of the said scrap department of the Lorillard Company and the said D. H. Ball, vice president of the Lorillard Company, were endeavoring to secure the cooperation of the members in reselling the said company's products at prices satisfactory to it, the said Lorillard Company was seeking in other sections of the United States the cooperation of its distributors for the purpose of preventing resales of the Lorillard Company's products at prices unsatisfactory to the said company. On May 25, 1921, the said Lorillard Company sent the following circular to all of its distributors in West Virginia, in which State some of the members resold Lorillard's products:

P. LORILLARD COMPANY,
119 WEST 40TH STREET,
New York City, N. Y., May 25, 1921.

To our customers:

The 10% discount from our list price allowed all jobbers on our tobacco line is what we consider a fair and legitimate profit, accruing to the jobber for handling and distributing our goods.

Long business usage has confirmed the fairness of this arrangement.

Knowing that a reasonable profit is essential to the success of any business and that only successful jobbers are satisfactory and dependable distributors, we feel that it is good business for us to urge the jobber to sell our brands at prices that will not prove an injury to our valuable trademarks. Where the jobber persists in disregarding our policy in such matters, it is logical for us to conclude that he is willing to sacrifice our business welfare for his own selfish interests.

We believe you will agree with us that it would be a very short-sighted policy to continue to supply such firms with the means of demoralizing our accustomed channels of distribution.

We trust it will be your pleasure to cooperate with us in preventing that which is undesirable.

All orders subject to acceptance by our New York Office, and if accepted will be filled at prices ruling on day of shipment.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Yours respectfully,

P. LORILLARD COMPANY, INCORPORATED.

PAR. 8. Advised and encouraged by the Lorillard Company so to do, the members organized the association, and advised and encouraged by the Lorillard Company so to do, the members at a meeting of the association held on June 8, 1921, agreed, each with the other, thereafter to resell cigarettes and other tobacco products to retailers at 2 per cent discount from list prices and to subjobbers at 7 per cent discount from list prices; at the same time the members

agreed, each with the other, thereafter not to allow a discount greater than 2 per cent from list prices to any subjobber who, on reselling to a retailer, would thereafter allow a discount greater than 2 per cent from a manufacturer's list price.

At the same time the said members agreed, each with the other, that if any of them should thereafter be discontinued by a manufacturer from its list of direct customers for having sold to a retailer at a discount greater than 2 per cent, or to a subjobber at a discount greater than 7 per cent from such manufacturer's list price, not to resell to such member, except at a discount of 2 per cent from such manufacturer's list price. On June 29, 1921, at a meeting of the association, the members adopted a list of subjobbers entitled to a discount of 7 per cent and at a meeting of the association, held on July 13, 1921, the members struck from said list the names of certain subjobbers who thereafter were allowed a discount of only 2 per cent from manufacturer's list prices, instead of a discount of 7 per cent, to which 7 per cent discount such subjobbers had been previously entitled by virtue of having been on the said subjobbers' list.

PAR. 9. The members, at a meeting of the association, held July 27, 1921, agreed, each with the other, by a resolution adopted at that meeting to allow a uniform discount of 2 per cent from list prices on resales to retailers and a uniform discount of 7 per cent from list prices on resales to subjobbers, when such resales to retailers and to subjobbers were made outside of the State of Ohio.

PAR. 10. All of the agreements made by the members, each with the other, described in paragraphs 8 and 9 hereof, were entered into by the said members with the aid of and in combination with the Lorillard Company.

PAR. 11. The members maintained until at least October 12, 1921, the uniform discount fixed by them, as described in paragraphs 8 and 9 hereof, except that in some instances some few of the members allowed higher rates of discounts, but in invoicing such sales said members billed at the rates of discount fixed by the members, as described in paragraphs 8 and 9 hereof, and allowed secret additional discounts; such invoices were made by such members because of their fear that if the Lorillard Company learned that they had allowed rates of discount greater than those fixed by the members as described in paragraphs 8 and 9 hereof, they would be discontinued from the list of direct purchasers of the Lorillard Company.

PAR. 12. One of the members, the Janszen Grocery Company, by a letter dated July 8, 1921, asked the Lorillard Company whether it would object to the allowance by the said Janszen Grocery Com-

pany of such discounts as appeared to the said Janszen Grocery Company to be advisable; on July 11, 1921, the Lorillard Company, by a letter of that date, answered the said letter of the Janszen Grocery Company by stating that it enclosed for its reply a copy of the circular letter, hereinafter quoted in paragraph 14 hereof, which said circular, the Lorillard Company stated in said letter, set forth its position. The said Janszen Grocery Company, in August, 1921, allowed to some of its customers rates of discount greater than those fixed by the members, as described in paragraphs 8 and 9 hereof. This fact, having come to the attention of the other members, they agreed, each with the other, at a meeting of the association to write, and in pursuance of such agreement they did write, to the Lorillard Company in September, 1921, informing said company of the fact that the Janszen Grocery Company was allowing higher rates of discount than those fixed by the members as described in paragraphs 8 and 9 hereof. Upon receipt of such letters, the Lorillard Company, for the purpose of assisting the members in maintaining the discounts fixed, as described in paragraphs 8 and 9 hereof, discontinued in September, 1921, shipments to the Janszen Grocery Company of goods previously ordered and did not resume shipments to the said Janszen Grocery Company until October 6, 1921, at which time the Lorillard Company became satisfied that thereafter the said Janszen Grocery Company would not allow, upon resales of the products of the Lorillard Company, discounts greater than those fixed by the members, as described in paragraphs 8 and 9 hereof.

PAR. 13. One of the distributors of the Lorillard Company reselling in the territory in which the members resold the products of the Lorillard Company, is George Worhley. He was invited by respondent Nienaber to join the Association, which invitation he declined. He also received from the secretary of the association a written invitation to join, but this invitation was declined. The discounts which said Worhley allowed on resales to his customers were greater than those fixed by the members, as described in paragraphs 8 and 9 hereof. After the said Worhley declined the said invitations to join the said association and after the said members put into effect the uniform discounts fixed as described in paragraphs 8 and 9 hereof, the aforesaid Manager of the Scrap Department of the Lorillard Company informed the said Worhley that if he, the said Worhley, did not maintain the prices fixed by the association, he would be stricken from the list of jobbers of the Lorillard Company and no more tobacco would be shipped to him by that Company. Because of the said threat of the said Manager, said Worhley changed the rates of discount allowed by

him on resales to his customers, so that when changed, such discounts were the rates of discount fixed by the members, as described in paragraphs 8 and 9 hereof.

PAR. 14. On June 29, 1921, the Lorillard Company sent to each of its distributors in Ohio, and on July 21, 1921, it sent to each of its distributors in Arkansas, Colorado, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming, the following circular letter:

NEW YORK.

To our customers:

The 10% discount from our list price allowed all jobbers on our tobacco line is what we consider a fair and legitimate profit, accruing to the jobber for handling and distributing our goods.

Long business usage has confirmed the fairness of this arrangement.

Knowing that a reasonable profit is essential to the success of any business and that only successful jobbers are satisfactory and dependable distributors, we feel that it is good business for us to urge the jobber to sell our brands at prices that will not prove an injury to our valuable trade-marks. Where the jobber persists in disregarding our policy in such matters, it is logical for us to conclude that he is willing to sacrifice our business welfare for his own selfish interest.

We believe that you will agree with us that it would be a very short-sighted policy to continue to supply such firms with the means of demoralizing our accustomed channels of distribution.

All orders subject to acceptance by our New York Office, and if accepted will be filled at prices ruling on day of shipment.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this company.

Yours respectfully,

P. LORILLARD COMPANY.

By these circulars the Lorillard Company meant that it would discontinue selling to any of its distributors who would allow higher rates of discount from its list prices than those being given by the bulk of the distributing power of the Lorillard Company in such distributor's territory.

PAR. 15. The aforesaid acts and things done by the members and each of them had the tendency and capacity to constrain and did constrain all wholesale tobacco dealers doing business in the territory above mentioned to uniformly sell cigarettes and other tobacco products to their retailer and subjobber customers at prices fixed by the respondent association and its members as hereinbefore set out and hence to hinder and suppress and did hinder and suppress all competition in the wholesaling of cigarettes and other tobacco products in the said territory, particularly among the members, and further to hinder and restrict and did hinder and restrict competition between all subjobbers and retail dealers in said territory. The

said practices of the members tended to hinder and obstruct the free and natural flow of commerce in the channels of interstate commerce. The aforesaid actions and things done by the Lorillard Company had the tendency and capacity to constrain and did constrain all of its wholesale dealers doing business in the territory above mentioned to uniformly sell its products to their retailer and subjobber customers at the prices fixed by the association and its members as hereinbefore set out and hence to hinder and suppress and did hinder and suppress all competition in the wholesaling of cigarettes, and other tobacco products of the Lorillard Company in said territory, particularly among the members of the association and further to hinder and restrict and did hinder and restrict competition between all subjobbers and retail dealers in said territory. Said respondent's practices thus tended to and did hinder and obstruct the free and natural flow of commerce in interstate commerce.

CONCLUSION.

The practices of said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the Complaint of the Commission, the answers of the respondents, the testimony and evidence and argument of counsel, and the Commission having made its findings as to the facts, and having reached its Conclusion that the respondents hereinafter named have violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties and for other purposes,"

Now, therefore, it is ordered, That the Cincinnati Wholesale Tobacco Association, its officers, as follows: J. E. Cruse, President, G. O. Fennell, Vice President, J. C. Nienaber, Vice President, John H. Dickerson, Secretary and the following corporations, partnerships and persons: David Straus, Robert Straus, and Charles L. Straus, partners trading as Henry Straus; J. B. Moos Company, a corporation and its following officers: D. J. Brown, President, R. C. Christie, Vice President, E. D. Stickle, Secretary and Treasurer; Janszen Grocery Company, a corporation, and its following officers:

August Janszen, Sr., President, Joseph A. Janszen, Vice President, Frank Harpenau, Treasurer, and August Janszen, Jr., Secretary; I. Keilson, Dan Keilson, Alexander Schwartz, partners, trading as I. Keilson & Son; Minnie Young Casey, trading as M. & L. Young; G. W. Bickett and Ray F. W. Bickett, partners trading as G. W. Bickett's Son: Louis C. Weisbrodt; G. O. Fennell; John C. Davis; James E. Cosgrove; George W. Harriman; John H. Schulten and Edwin E. Schulten, partners trading as George Schulten Sons; J. C. Nienaber; H. Haebe, C. Bosken, and each of them cease and desist from fixing, enforcing and maintaining, and from enforcing and maintaining, by combination, agreement or understanding among themselves, or with or among any of them, or with any other wholesaler of cigarettes of their tobacco products, or any manufacturer thereof, resale prices for cigarettes or other tobacco products dealt in by said respondents, or any of them, or by any of them, or by any other wholesaler of cigarettes or other tobacco products.

And it is further ordered, That P. Lorillard Company, Inc. cease and desist from assisting and from agreeing to assist any of its dealer customers in maintaining and enforcing in the resale of cigarettes and other tobacco products manufactured by the said P. Lorillard Company, Inc., resale prices for such cigarettes and other tobacco products fixed by any such dealer customer by agreement, understanding, or combination with any other dealer customer of said P. Lorillard Company, Inc.

It is further ordered, That all of said respondents and each of them shall file with the Federal Trade Commission, within sixty (60) days from the date of the service upon them of this Order, a copy in writing, stating the manner and form in which this Order has been conformed to.

FEDERAL TRADE COMMISSION

v.

SALT LAKE COOPERATIVE WOOLEN MILLS.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 971—February 29, 1924.

SYLLABUS.

Where a corporation engaged in the sale of knit underwear, sweaters, hosiery, woolen shirts, and similar merchandise direct to consumers, some of which articles it manufactured by a process of knitting woolen yarns on knitting machines, and others of which it did not manufacture, but weaving no cloth, and performing no operation in the conversion of wool into cloth, either in the way of spinning or weaving;

(*a*) Used as its corporate name a name which included the words "woolen mills," and featured the same in its advertisements, letterheads, etc., together with a picture representing a two-story building carrying signs displaying in large letters said name;

(*b*) Represented to its customers or prospective customers that it manufactured woolen goods to order and was organized for the purpose of manufacturing such goods and selling the same from the mills direct to the consumer:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. Frank K. Nebeker of Washington, D. C., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Salt Lake Cooperative Woolen Mills, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is now and has been since April, 1919, a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its office and principal place of business at Salt Lake City, in said State, and since its incorporation has been engaged and now is engaged in the business of selling direct to customers located in the State of Utah and various other States

of the United States, knit and woven underwear, hosiery, sweaters, woolen shirts, mackinaws, blankets and similar merchandise, and in shipping, or causing to be shipped, from the State of Utah, the said merchandise, when sold, to their customers at various points located in States other than the State of Utah. In the course and conduct of its said business respondent is and has been during all the times mentioned in this complaint, in competition with others similarly engaged.

PAR. 2. That respondent, in the course and conduct of its said business, uses its corporate name "Salt Lake Cooperative Woolen Mills," and has prominently displayed and does now prominently display its said name in its newspaper advertisements, letterheads, order blanks, package labels and other stationery and literature, and has represented and does now represent to its prospective customers by the means aforesaid and through its agents, that it manufactures woolen goods to order and was organized for the purpose of manufacturing and distributing woolen goods from the mill direct to the consumer. Respondent has also circulated and does now circulate among its prospective customers literature upon which appears the picture of a large two-story building bearing upon its two sides the sign in large letters "Salt Lake Cooperative Woolen Mills."

PAR. 3. Respondent has not, since its incorporation, and does not now, own, control, or operate any woolen mill or other kind of factory, and did not and does not now manufacture any of the articles sold or offered for sale by it, and has filled and now fills the orders received by it from its customers, from merchandise purchased by it from the stock of manufacturers and others.

PAR. 4. The use by respondent of the corporate name "Salt Lake Cooperative Woolen Mills" in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the public into the mistaken belief that the respondent owns or operates mills or factories in which are manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying directly from the manufacturer and are thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Salt Lake Cooperative Woolen Mills, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Salt Lake Cooperative Woolen Mills, is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, with its office and principal place of business in Salt Lake City in said State, and since its incorporation has been engaged and now is engaged in the business of selling direct to customers located in the State of Utah, and various other States of the United States, knit underwear, sweaters, hosiery, woolen shirts, overcoats, blankets, and similar merchandise, and is shipping or causing to be shipped from the State of Utah, the said merchandise to their customers at various points located in States other than the State of Utah. In the course and conduct of its said business respondent is in competition with others similarly engaged.

PAR. 2. The respondent company was organized and received its certificate of incorporation bearing date April 12, 1919, capital stock, $100,000, $80,000 of which was preferred, and $20,000 common, and was organized for the purpose among other things, of manufacturing and selling underwear, sweaters, knit vests, knit skirts, and similar merchandise to be made from woolen yarn. In the year 1919 on account of financial conditions the corporation attempted to do nc business under its corporate name, and was unable to do any business under its corporate name in 1920, but during the latter part of 1919 and the year 1920 ran a small retail store in Salt Lake City, under the name of Salt Lake Woolen Sample Store. In January, 1921, the respondent leased one-half of the second floor of a building in Salt Lake City, and there installed their office and salesroom,

but at that time they had no machinery, being unable to arrange for the purchase of same on account of the financial conditions then prevalent, and during 1921 and 1922 the respondent bought the goods which they sold principally from the Knight Woolen Mills, Provo, Utah, and the Ogden Knitting Company, Ogden, Utah, under contracts whereby these mills made the goods for the respondent to conform to the special orders which the respondent took from its customers through its salesmen, and in December, 1921, the respondent leased the remaining half of the second floor of the building in order to install therein the machinery for the operation of the business they then were planning for, and in May, 1922, the respondent commenced the actual installation of machinery, and on January 20, 1923, began the actual manufacturing of a large proportion of the goods which they sell, and thereafter continued to install machinery as rapidly as possible until June 15, 1923, at which date the respondent had installed and in operation eight knitting machines, two looms, cutting machines, and twelve finishing machines.

PAR. 3. Respondent manufactures the underwear, sweaters, skirts and some blankets by a process of knitting woolen yarns on knitting machines. It does not weave any cloth, nor does it perform any operation in the conversion of wool into cloth, either in the way of spinning or weaving. In addition to the knitted articles which it manufactures and sells, respondent also sells certain other lines such as silk sweaters, leather goods, woolen shirts and overcoats which it does not manufacture. Woolen mills are generally understood to be mills in which the raw wool is converted into finished cloth, or some process leading up to the completion of the finished cloth is performed.

PAR. 4. The cooperative feature of the respondent's plan consisted in selling shares of its preferred stock to customers, and customers who held preferred stock were to receive the goods which they purchased of the respondent at a discount of approximately fifteen per cent from the regular prices as charged through agents. This plan would give customers holding stock part of the commission ordinarily allowed to salesmen.

PAR. 5. The respondent sells to the jobbing trade and also sells direct to the consumer through traveling salesmen who visit the individual customer and take orders from said customer for such goods as respondent sells, and the underwear it sells is made to individual measurements whenever it is necessary.

PAR. 6. The respondent in the course and conduct of its business used and now uses its corporate name "Salt Lake Cooperative Woolen Mills," and has and now prominently displays its said name

in its advertisements, letterheads, order blanks and other stationery, and represents to its customers or prospective customers that it manufactures woolen goods to order, and was organized for the purpose of manufacturing and selling woolen goods from the mill direct to the consumer, and the respondent has upon its letterhead a picture representing a two-story building, which building carries two signs in large letters upon which is set out the name of the respondent corporation.

CONCLUSION.

That the acts, practices and activities of respondent as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent and a stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Salt Lake Cooperative Woolen Mills, Inc., its successors, officers, directors, agents, servants and employees, cease and desist from:

1. Doing business under the corporate name and style of Salt Lake Cooperative Woolen Mills, or any other corporate name which includes the words "Woolen Mills," unless and until such respondent actually owns or operates a mill or mills in which raw wool is converted into yarn or cloth by the process of spinning or weaving.

2. Using any words, phrases, sentences or order blanks, letterheads or any other literature distributed by it in the course of its business, which indicates or creates the impression that said respondent is a manufacturer of the articles which it sells, unless and until such respondent does actually manufacture said articles.

It is further ordered, That respondent shall within sixty (60) days after the date of the service upon it of this Order file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

MORRIS ERRERA.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 983—March 5, 1924.

SYLLABUS.

Where an individual engaged in the sale of an orange beverage in different stores in the same city, all of which stores had similar signs, letterings, legends, white store fronts, counters, arrangements thereof, and distinctive glasses for the serving of such beverage, for which there had come to be a large and increasing public demand; and thereafter a competitor caused his signs, letterings, legends and store fronts to be made to correspond with those of such individual, and also his counters, arrangements thereof, and glasses; with the result that persons were misled into entering said competitor's stores as and for those of such individual, and purchasing the orange beverage there sold by him as and for that of said individual:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Thomas H. Baker, jr., for the Commission.

Mr. P. H. Marshall, of Bell, Marshall & Rice of Washington, D. C., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Morris Errera, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH. 1. Respondent is engaged in the business of operating a retail store at No. 439 9th St. N. W., in the District of Columbia, where he sells confectionery, soft drinks, cigars, tobacco and other similar commodities to the consuming and purchasing public, and said respondent has for more than one year last past carried on said business in direct, active competition with other individuals, partnerships and corporations in the District of Columbia similarly engaged.

PAR. 2. For a period of more than five years last past one Carroll H. Dikeman has been engaged, in the District of Columbia, in the business of operating a chain of retail stores known as Dikeman's Orange Beverage Stores, and at present located respectively at 431

9th St. N. W., 719 14th St. N. W., 1004 F St. N. W., 3034 14th St. N. W., and 931 9th St. N. W., at which stores said Dikeman has, during said period, sold and now sells an orange beverage known as "Dikeman's Orange Beverage" to the consuming and purchasing public in direct, active competition with other individuals, partnerships and corporations in the District of Columbia, including said respondent.

PAR. 3. All of said stores operated by said Dikeman, as aforesaid, have the same distinctive exterior appearance consisting of a white painted store front and on either side of the entrance distinctive signs bearing the legend "Dikeman's Delicious Orange Beverage, 5¢" in gilt lettering on a white background and bearing at the top the representation of a cluster of oranges, the whole being surrounded by a thin blue border. Said distinctive signs displayed by said Dikeman at his said stores, together with the general appearance of the store fronts have become well known to the people of the District of Columbia and have become associated exclusively with said Dikeman's said establishments, and the orange beverage sold and dispensed at said establishments by said Dikeman has acquired a wide and favorable reputation and good will among the consuming and purchasing public of said District, of which facts the respondent herein had full knowledge.

PAR. 4. After the establishment of said Dikeman's orange beverage stores, as aforesaid, respondent adopted for his said store located at 435 9th St. N. W., in the District of Columbia, on the same side of the street as one of said Dikeman's 9th street stores, and two doors north of the same, in the District of Columbia, a store front painted white and arranged in substantially the same manner as the store of said Dikeman, and respondent installed at the entrance of said store a sign on which the words "California Orange Beverage, 5¢" were painted in gilt lettering on a white background, the whole being surrounded with a thin dull colored border, which sign simulated the said signs used by said Dikeman on his said stores, both in size, shape, coloration, general appearance, and principal legend (omitting the name Dikeman), which store front and sign, together with the general appearance and aspect of said store had and have the capacity and tendency to mislead and deceive, and has in fact misled and deceived a portion of the consuming and purchasing public of said District, into the mistaken belief that respondent's said store was and is one of said Dikeman's chain of stores, and that a beverage sold and dispensed by respondent therein was and is said Dikeman's orange beverage, all to the prejudice of the public and of said respondent's said competitors.

PAR. 5. The above acts and conduct of respondent, under the aforesaid circumstances, constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon respondent, Morris Errera, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondent having entered his appearance by his attorney and having filed his answer herein, thereupon, hearings were had before an examiner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondent; thereupon this proceeding came on for final hearing, and the Commission being duly advised in the premises, and upon consideration thereof, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Morris Errera, has been for over five years last past and is now engaged in the business of operating a retail store at 435 Ninth Street N. W., in the City of Washington, District of Columbia, wherein during all of said time he sold and now sells confectionery, soft drinks, including orangeade, cigars and other similar commodities, to the general public, and in the conduct of such business he was during all of said time and is now in direct and active competition with other individuals, partnerships and corporations similarly engaged in the District of Columbia, and more particularly with Carrol H. Dikeman; that after the Federal Trade Commission filed its complaint herein the said respondent opened up a second retail store at No. 3318 Fourteenth Street, in said City and District, at which he has ever since also sold and now sells orange beverage in competition, as above described, with said Dikeman.

PAR. 2. That Carroll H. Dikeman has been engaged ever since 1916 and is now engaged, in the City of Washington, District of Columbia, in the business of operating a chain of retail stores known as

Dikeman's Orange Beverage Stores. The first of such stores was opened by said Dikeman at 431 Ninth Street N. W., in said District. From time to time he opened other stores in addition, in said District. They were and are located at 719 Fourteenth Street N. W., 1004 F Street N. W., 1338 F Street N. W., 3034 Fourteenth Street N. W., and 655 Pennsylvania Ave. S. E. At all of these stores since they have been established said Dikeman has sold and now sells an orange beverage known as "Dikeman's Orange Beverage," to the general public in direct and active competition with other individuals, partnerships and corporations similarly engaged in the District of Columbia, including said respondent.

PAR. 3. That the store fronts of the respondent's places of business, particularly the one at said No. 435 Ninth Street N. W., Washington, D. C., two doors from the Ninth Street store of said Dikeman, were made by said Errera to correspond as nearly as possible with the stores of said Dikeman ever since Errera began business. Consequently, the store fronts of the respondent's places have, ever since, been practically identical in construction and appearance with those of said Dikeman.

PAR. 4. That the store fronts of both during all of the said times consisted and do now consist of a right hand and a left hand set of triple folding doors. Each door in the sets was and is now divided into two light panels, the top panel being about one-half the height of the lower panel, and each set was made to fold back. Thus folded back the store front is entirely open. Across the entire store front of each store and above the folding doors there was and is a transom bar, running up from which are two mullions which divide the transom into three transom lights. Upon the upper part of each of the two mullions a round white glass electric light globe was fastened. Three months before the date of the hearing in this case said Dikeman in an effort to differentiate somewhat his stores from those of the respondent substituted oval light globes in place of the round ones which he has had there for the past seven years. The whole of the store fronts of each of the parties including the folding doors, the transom bar, the two mullions and the two door jambs, with the exception of the hardware, and the door and transom panes are painted white. (Respondent's Exhibits Nos. 1, 2; and Commission's Exhibits Nos. 3, 4, 5, 6—Tr. pp. 14, 21, 94.)[1]

PAR. 5. That ever since the establishment of said Dikeman's stores in 1916, there has been and is now upon each door jamb a sign designed by Dikeman himself in that year. There was no other sign like it in Washington. This design (Commission's Exhib. No. 2)[1]

[1] Not published.

was given by Dikeman at that time to James L. Hale, a Washington sign painter, doing business as "The Willis Sign Company," with directions to Hale to use it in painting said Dikeman's signs. This style of sign has been used continuously by him on his store fronts ever since. No change has been made in the coloring or appearance during its use.

PAR. 6. That until he began selling orange beverage and on or about July, 1922, the respondent had black signs upon his store fronts. He then engaged said Hale to make, in the words of Hale, "a couple of signs similar to Dikeman's." (Tr. p. 45.) Under those instructions Hale designed for the respondent Commission's Exhibit No. 1. Respondent instructed Hale to "put oranges at the top," but Hale refused to go that far in making a likeness of Dikeman's design (Tr. p. 48). Thereafter Hale painted signs for the respondent after the design of Commission's Exhibit No. 1. These were placed by respondent upon his Ninth Street store and other places of business and have been there ever since.

PAR. 7. That the signs of both the respondent and Dikeman may be described as follows: Each was and is identical in form and about two feet wide and six feet high. They were and are of rounded convex shape and are placed on the entrance door jambs. The bottom of each sign is at about two feet from the sidewalk. Each sign is painted white and has the same narrow blue border. Upon the lower half of each and beginning just below the middle of the sign are the words "ORANGE BEVERAGE," descriptive of the article offered for sale. This word "ORANGE" on each sign is of large Egyptian gilt upper case letters of the same size. The word "BEVERAGE" is also of Egyptian gilt upper case letters of slightly smaller size than those in the word "ORANGE." Below the words "ORANGE BEVERAGE" on each is a large figure 5 in Arabic style of the same form and size, at the upper right of which and a little at one side is the usual symbol of ¢ abbreviation for the word "cents." Above the words "ORANGE BEVERAGE" there appears in the sign of the respondent the word "California" in gilt lower case instead of the words "Dikeman's Delicious" appearing in said Dikeman's sign. In respect to the words the respondent's signs are identical in size, style, color and case to the words in said Dikeman's signs. The upper half of the signs of both respondent and said Dikeman consist of an insignificant gilt decoration topped in the respondent's sign by an oval field of blue upon which is painted a glass of orangeade and topped in Dikeman's sign by a round blue field upon which is painted a twig of two oranges with foliage.

PAR. 8. That at the time of the opening of each of said stores during the past seven years the said Dikeman placed therein, and has ever since maintained in each, a white marble counter over which he served his orange beverage. These counters were always placed on the right hand side in each store. Into the tops of these counters were sunk white china beverage containers with white metal covers. From these containers his orange beverage has at all times been served in thin, clear, five inch high glasses, slender in the middle and flaring out at the top and bottom.

PAR. 9. That when on or about July, 1922, the respondent opened up his store in Ninth Street, and later on when he opened up his store in Fourteenth Street, he too placed on the right-hand side of each store a white marble counter very similar to those of the said Dikeman. Into the tops of these, following the example set by said Dikeman, he also sank white china beverage containers with white metal covers and from these containers he at all times has served his orange beverage in thin, clear five inch glasses that faithfully imitate the slender waist and the flaring top and bottom of the style used by said Dikeman.

PAR. 10. That from time to time, previous to the issuance of the complaint herein, and since July, 1922, when the respondent began to sell orange beverage, several persons, while looking for said Dikeman's places of business, to purchase his orange beverage, and for other purposes, were misled by said similarity of said respondent's stores and signs to those of said Dikeman, and by reason of such deception were induced to enter into the said respondent's stores instead of said Dikeman's. And some of these thereupon purchased the orange beverage of the respondent believing the same to be that of said Dikeman's.

PAR. 11. That by reason of the quality, taste and excellence of the said Dikeman's orange beverage made by said Dikeman he has at all times enjoyed and now enjoys a large and increasing public demand for the same. This business has increased from one to three gallons a day in 1916 to about 1,200 gallons a day at the time of the hearing herein.

PAR. 12. That in connection with the sale by the respondent of a beverage practically identical in appearance, taste and composition, of that sold by Dikeman, the store fronts, the signs, doors, counters, beverage containers and serving glasses of the respondent's places of business so closely resembled in construction, material, form, size, design, decoration, color, arrangement and general appearance those of the said Dikeman that they had and have now the capacity and tendency to deceive and in many instances have deceived the general public.

CONCLUSION.

That the above practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent and testimony heretofore taken, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of Section 5 of an Act of Congress entitled, "An Act To Create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Morris Errera, his agents, representatives, servants and employees do cease and desist from simulating the signs, letterings, legend and store front in color, size, shape, design and general appearance of the chain of stores of Carroll H. Dikeman.

It is further ordered, That respondent, Morris Errera, shall within sixty (60) days after the service upon him of a copy 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

L. F. CASSOFF, AN INDIVIDUAL DOING BUSINESS UNDER THE NAMES AND STYLES OF CENTRAL PAINT & VARNISH WORKS AND CENTRAL SHELLAC WORKS.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1062—March 5, 1924.

SYLLABUS.

Where an individual engaged in the manufacture and sale of varnishes and similar products, sold a product not composed wholly of shellac gum cut in alcohol, branded, labeled, and advertised as "White Shellac" and "Orange Shellac," with the effect of misleading and deceiving a substantial part of the purchasing public in reference to the composition thereof, and with the capacity and tendency thereby to induce its purchase:

Held, That the sale of products labeled and advertised, as above set forth, constituted an unfair method of competition.

Mr. William A. Sweet for the Commission.

Hon. Emanuel Celler, of New York City, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that L. F. Cassoff, an individual doing business under the names and styles of Central Paint & Varnish Works and Central Shellac Works, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade names and styles of Central Paint & Varnish Works and Central Shellac Works, with his principal place of business in the Borough of Brooklyn, City and State of New York. He is engaged in the manufacture of varnishes and allied products and the sale thereof to wholesale and retail dealers located at points in various States of the United States. He causes said products when so sold to be shipped from his said place of business in the Borough of Brooklyn, City and State of New York, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business

respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of varnishes and allied products in interstate commerce.

PAR. 2. Shellac, or shellac varnish as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol, and is so understood by jobbers, dealers and the purchasing public.

PAR. 3. The respondent, in the course and conduct of his said business, manufactures and sells, and for more than one year last past has manufactured and sold, to jobbers, dealers and the purchasing public, in commerce as aforesaid, throughout the States of the United States, by means of traveling salesmen, advertisements and otherwise, a product not composed wholly of genuine shellac gum dissolved in alcohol, which product and the containers thereof respondent labels, brands and advertises as "White Shellac" and "Orange Shellac," without indicating in any way whatever on such labels, brands and advertisements that said product contains any other gum, ingredient or substitute for gum, than genuine shellac gum. The said labels, brands and advertisements upon such product and the containers thereof are false and misleading and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and the purchasing public into the belief that such product so sold, labeled, branded and advertised by respondent is shellac or shellac varnish which is known and understood by the trade and purchasing public to be composed wholly of genuine shellac gum dissolved in alcohol, and to induce said purchasers to purchase same in that belief.

PAR. 4. Many of the respondent's competitors referred to in paragraph 1 hereof, sell and distribute throughout the United States shellac varnishes represented, advertised, branded and labeled as such, which said varnishes are composed of shellac gum dissolved in alcohol and contain no other gum or rosin.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, L. F. Cassoff, an individual, doing business under the names and styles of Central Paint & Varnish

Works, and Central Shellac Works, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed his answer and entered his appearance herein, and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony before the Commission in support of the charges in the complaint or in opposition thereto, and proceed forthwith to make its findings as to the facts, and such order as it may deem proper to enter therein without oral argument or brief, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is an individual doing business under the trade names and styles of Central Paint & Varnish Works and Central Shellac Works, with his principal place of business in the Borough of Brooklyn, City and State of New York. He is engaged in the manufacture of varnishes and similar products and the sale thereof to wholesale and retail dealers located at points in various States of the United States. He causes said products when so sold to be shipped from his place of business in the Borough of Brooklyn, City and State of New York, into and through other States of the United States to said purchasers at their respective points of location. There are other individuals, partnerships and corporations located in various States of the United States likewise engaged in the business of manufacturing varnishes and similar products which products they sell to various users of such products and cause to be transported from their several places of business into and through other States of the United States to purchasers thereof located in the same States in which respondent's customers are located. The volume of business and quantity of products manufactured and sold by the respondent, as aforesaid, are substantial and form an important item of commerce among the several States and Territories of the United States. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations likewise engaged in the manufacture and sale of varnishes and similar products in interstate commerce.

PAR. 2. Shellac, or shellac varnish as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol, and is so understood by jobbers, dealers and the purchasing public.

PAR. 3. The respondent, in the course and conduct of his said business, manufactures and sells, and for more than one year last

past has manufactured and sold, to jobbers, dealers and the purchasing public, as aforesaid, throughout the States of the United States, by means of traveling salesmen, advertisements and otherwise, a product not composed wholly of genuine shellac gum dissolved in alcohol which product and the containers thereof respondent labels, brands and advertises as "White Shellac" and "Orange Shellac," without indicating in any way whatever on such labels, brands and advertisements that said product contains any other gum, ingredient or substitute for gum, than genuine shellac gum.

PAR. 4. There are a large number of manufacturers situated in the various States of the United States engaged in the business of manufacturing and selling shellac varnishes who cause their products to be transported from their several places of business into and through other States of the United States to purchasers located in the same States in which respondent's customers are located who brand, label and advertise their products as shellac or shellac varnish which products are composed solely of shellac gum dissolved in alcohol.

PAR. 5. That the brands and labels containing the words "White Shellac" and "Orange Shellac" used by the respondent upon the containers of the product manufactured, sold and shipped by him as set forth in the foregoing findings and the advertisements containing the words "White Shellac" and "Orange Shellac" used by him in respect to such product are false and have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such product so labeled, branded and advertised by the respondent is composed solely of genuine shellac gum dissolved in alcohol and to induce such purchasers to purchase same in that belief.

CONCLUSION.

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of the Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has

violated the provisions of the Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its power and duties, and for other purposes,"

It is now ordered, That the respondent, L. Francis Cassoff, otherwise known as L. F. Cassoff, doing business under the names and styles of Central Paint & Varnish Works and Central Shellac Works, his agents, representatives, servants and employees, cease and desist:

1. From directly or indirectly employing or using on labels or as brands for varnish not composed wholly 100% of shellac gum cut in alcohol or on the containers in which the varnish is delivered to customers the words "Orange Shellac," "White Shellac," or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly indicating that such product contains other substances, ingredients or gums than shellac gum, and by a word or words clearly and distinctly setting forth the substances, ingredients or gum of which the varnish is composed with the percentages of all such substances, ingredients or gums therein used clearly stated upon the label, brand or upon the containers (e. g. "Shellac Substitute" or "Imitation Shellac" to be followed by a statement setting forth percentages of ingredients or gums therein used).

2. From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100% shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers the words "Orange Shellac," "White Shellac," or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly indicating that such product contains other substances, ingredients or gum than shellac gum, and by a word or words clearly and distinctly setting forth the substances, ingredients or gum of which the varnish is composed with the percentages of all such substances, ingredients or gums therein used clearly stated upon the label, brand or upon the containers (e. g. "Shellac Substitute" or "Imitation Shellac" to be followed by a statement setting forth percentages of ingredients or gums therein used).

It is further ordered, That the respondent shall file with the Federal Trade Commission within sixty (60) days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

C. READ & COMPANY, INCORPORATED.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1088—March 5, 1924.

SYLLABUS.

Where a corporation engaged in the sale of coffee, tea, and chinaware to retail dealers,

(a) Gave and offered to give to its dealer customers one hundred pieces of chinaware of unequal value, together with each one hundred package order of tea or coffee, in pursuance of a sales plan whereby each ultimate purchaser of a package was to receive one of the aforesaid pieces of china, as determined by a coupon theretofore placed in each package by it, and proposed to said customers that they resell such packages for an equal price per package and deliver therewith to the different purchasers the various articles of chinaware as called for by said purchasers' coupons; with the result that different members of the public buying said packages received respectively by chance or lottery packages of tea or coffee, and chinaware, of a total unequal value, for an equal price;

(b) Falsely represented through salesmen and through circulars that said articles of chinaware were delivered free of charge to the dealer purchasers of its tea or coffee, as aforesaid, and in its bills for said tea or coffee, and chinaware, made no separate charge for the latter; with the capacity to deceive and mislead said dealers into believing that they were in fact receiving said chinaware without charge, and that in reselling said tea and coffee, and delivering the articles of china therewith, to different members of the purchasing public, as above set forth, they were in turn giving the same free:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward E. Reardon for the Commission.

Mr. Thomas Foley Hisky, of Hinkley, Hisky & Burger of Baltimore, Md., for respondent.

COMPLAINT.

Acting in the public interest, pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that C. Read and Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is and for more than three years prior to the date hereof was a corporation organized and doing business under the laws of the State of Maryland, having its principal place of business in the city of Baltimore in said State. It is and has been during the times above referred to engaged in the business of selling at wholesale teas, coffee, and chinaware to individuals, partnerships, and corporations located in and engaged in the business of selling teas, coffee, and chinaware at retail to the general public in various other States of the United States of America other than the State of Maryland and respondent still causes and during the times above referred to has caused the said teas, coffee, and chinaware, when sold by it to the said individuals, partnerships, and corporations, the said retail dealers, to be transported to them at their respective locations above referred to from respondent's said place of business. In the course and conduct of its said business, the respondent is and has been during the times above referred to in competition with other individuals, partnerships, and corporations, similarly engaged in selling at wholesale teas and coffees and who, during the aforesaid times have caused and who still cause the said commodities, when sold by them, to be transported to their purchasers located in various States of the said United States, other than the State of origin of the shipments of said commodities and including States other than the State of Maryland into which respondent has caused and still causes said commodities when sold by it to be transported.

PAR. 2. Respondent in the course and conduct of its said business during the times above referred to and, more particularly, on or about June 13, 1923, has conspired with and still continues to conspire and confederate with one Moore, an individual with a place of business in the State of Virginia and engaged in said State in the business of selling teas, coffee, and chinaware at retail to the general public, and with certain other unknown individuals, partnerships and corporations engaged in the retail tea and coffee business with places of business, respectively, in States of the said United States other than in the State of Maryland, in causing to be transported from the State of Maryland to purchasing members of the general public, customers of the said Moore, in the State of Virginia, and to purchasing members of the general public, customers of said unknown individuals, partnerships, and corporations, retail dealers in said other States, certain packages of teas and coffees and certain articles of chinaware and in selling and causing to be sold to the said purchasing members of the general public, above referred to, the said packages of teas and coffees, and the said articles of chinaware transported as aforesaid, according to a plan,

method, arrangement, or scheme of chance or lottery devised by respondent and carried out by respondent and said Moore and said unknown retail dealers at the times above referred to, in accordance with which plan, method, arrangement, or scheme, the total value of the package or packages of teas or coffees and the article or articles of said chinaware distributed and delivered with said package, respectively, to some of the purchasing members of the general public and received by them, the customers of said Moore or of said other unknown retail dealers is of greater or lesser amount than the total value of the said package or packages of teas or coffees, including the article or articles of said chinaware, so distributed and delivered with said packages, respectively, to others of the purchasing members of the general public and received by them, the customers of the said Moore, or of the said other retail dealers, the total price of each said package of tea or coffee, respectively, together with the said article of chinaware delivered with each said package, respectively, being the same to each member of the general public who has at the aforesaid times purchased from or who continues to purchase the same from the said Moore or from the said unknown retail dealers.

PAR. 3. The aforesaid plan, method, arrangement, or scheme of chance or lottery is and was substantially as follows: Respondent with each sale to said Moore or said unknown retail dealers, of 100 packages of teas or coffees of equal weight and value respectively, delivered and still delivers at the same time to the said Moore and said other retail dealers 100 pieces of chinaware, including cups, saucers, plates, cereal bowls, fruit plates, pitchers, and covered dishes, one of which was and is to be delivered to the members of the general public with each purchase of a package of said tea or coffee as follows: In each said package respondent during the aforesaid times placed and still continues to place a coupon entitling the member of the general public, the purchaser from said Moore or from said unknown retail dealers to receive one of said articles of chinaware. The specification of the particular piece of chinaware the said purchaser was and is to receive was and is placed upon said coupon by respondent and, when one of said packages was or is purchased and opened by a customer of said Moore or other unknown retail dealer, the purchaser obtains and has obtained from said Moore or said other retail dealer the article of chinaware specified upon the inclosed coupon without further charge or cost than the price paid to said Moore or other retail dealer for the package of tea or coffee. Said articles of chinaware were and are of different values and said packages of tea and coffee, as the case might be, were and are of equal weight and value and are each respectively priced the same to

the said purchaser by the said Moore and said other retail dealers, respectively, and the total value of the chinaware and each package of tea or coffee so obtained by the said member of the purchasing public was thus during the aforesaid times and continues to be fixed solely by chance and the said total value of said articles received by the purchasers was and continues to be greater or lesser than the value of the similar articles received by other purchasers, the price to all said purchasers being the same for the said articles, respectively.

PAR. 4. In selling said packages of teas and coffees to said Moore and to the said other retail dealers, respondent during the aforesaid times has fixed and still fixes the wholesale prices thereof, respectively, at an amount which covers the total cost of the said 100 pieces of chinaware and of the said 100 packages of teas or coffees and a reasonable profit thereon to respondent and in reselling said commodities to the general public the said Moore and other said retail dealers, during the aforesaid times have added and still continue to add to the said total wholesale price of said 100 packages and said 100 pieces of chinaware, respectively, a reasonable profit to said Moore and said other retail dealers, and the retail price per package to the general public is and has been, during the aforesaid times, placed at the one-hundredth part of the said total reselling price by the said Moore and other retail dealers.

In pursuance of the aforesaid conspiracy and confederation of respondent and said Moore and said other retail dealers, the general purchasing public are and have been at and during the aforesaid times deceived and misled by respondent and said Moore and said other retail dealers into believing that the article or articles of chinaware so delivered and so continuing to be delivered to them with each of the aforesaid packages were and are free of cost to the said purchasing member of the general public, whereas in truth and in fact the said article or articles were during the aforesaid times and are not delivered free of cost, but the cost of the same, together with a reasonable profit thereon is included in the price paid and to be paid by the general public purchasing the said packages.

PAR. 5. Among the competitors of respondent are many who sell teas and coffees at wholesale at reasonable wholesale prices, and who do not offer or place in the hands of the retail dealers any merchandise to be given to their purchasers, by chance or otherwise. Respondent's practices, as aforesaid, tend to, and do induce the general public to purchase said commodities so sold by respondent in preference to similar commodities of respondent's said competitors without regard to the difference in quality or price between said commodities

of respondent and those of said competitors, and are induced to make such purchases by the chance of obtaining said premiums of chinaware in connection with the purchase of respondent's commodities, as above set forth.

PAR. 6. The practices of respondent hereinbefore set forth are all to the prejudice of the public and of respondent's said competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, C. Read & Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent not having filed an answer herein and having stipulated and agreed that a statement of facts signed and executed by the respondent and W. H. Fuller, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by the Federal Trade Commission as such and in lieu of testimony before the Commission in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed further upon said statement of facts, stating its findings as to the facts and conclusion and entering its order disposing of the proceeding.

And, thereupon, this proceeding came on for final hearing and the respondent having waived the filing of briefs and the hearing of oral argument herein before the Commission, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

Respondent is and for more than three years immediately prior to November 16, 1923, was a corporation organized and doing business under the laws of the State of Maryland, having its principal place of business in the city of Baltimore in said State. Respondent is and has been during the times above referred to engaged in the business of selling at wholesale teas, coffees and chinaware to individuals, partnerships, and corporations located, respectively, in various other States of the United States of America other than the State of Mary-

land and engaged therein in the business of selling teas, coffees and chinaware at retail to the general public and respondent still causes and during the times above referred to has caused the said teas, coffees, and chinaware, when sold by it to the said individuals, partnerships and corporations, the said retail dealers, to be transported to them at their respective locations in said other States from respondent's said place of business.

Respondent in the course and conduct of its business, during the aforesaid times, has packed and still continues to pack large quantities of teas in lots of 100 packages, each package being 2 ounces in weight and in lots of 100 packages, each package being 6 ounces in weight and large quantities of coffees in lots of 100 packages each package being one pound in weight.

During the aforesaid times the respondent caused to be prepared circulars upon which were photographs or illustrations of articles of chinaware and on which, underneath said photographs or illustrations, was printed, as follows:

"GIVEN AWAY FREE"

"100 Pieces of Rose Decorated Chinaware
A ticket in each package calling for one of these pieces of chinaware.
24 Rose decorated Cups and Saucers 24 Rose 6-8 in. Plates
24 " " Fruit Saucers or Plates 24 Rose Cereal Dishes
2 " " Covered Steak Dishes 2 " Pint Pitchers
The Same assortment with Either of the Following Goods.
100 2 oz. YOU KNOW TEA 100 1 lbs. REO. C. M.
Costs you $20.00 A mixture of Cereal Chicory and Coffees Costs you $23.00
Retails at 25¢ per Package Retails at 30¢ per Package
100 1 lbs. Tiger Coffee
Whole Bean or Ground

COSTS YOU $32.00

Retails at 40¢ Per Package
All goods F. O. B. Baltimore but we allow 5% Cash discount if bill is paid within 10 days of date of Invoice.

C. READ & CO., INC. GENERAL STORE SPECIALISTS,
18-20 N. Greene St., Baltimore, Md."

The above described circulars, or others containing substantially the same or similar proposals or offers, were distributed, or the contents thereof were stated, by respondent during the aforesaid times through its agents and servants to individuals, partnerships and corporations, the retail dealers who were purchasers or prospective purchasers from the respondent of teas, coffees and chinaware.

In each of the packages of teas and coffee packed by it as aforesaid respondent placed, and still continues to place, a coupon upon

which respondent designated and continues to designate a particular piece or articles of the chinaware referred to in the aforesaid circulars.

Upon the wrappers or cartons of the said packages of teas and coffees have been and still are printed the following words "open and examine before purchasing." Some of the respondent's packages of said teas or coffees have been and still are sealed and the contents of such sealed packages could not or cannot be examined without breaking or tearing open the packages containing the same.

In accordance with representations contained in circulars such as described or referred to above, and with proposals such as contained therein, the respondent during the times above referred to, agreed with and continues to agree with certain individuals, partnerships and corporations, retail dealers engaged in the sale of teas and coffees and located in various States of the United States other than the State of Maryland, to sell to them and respondent did sell and continues to sell to them lots of 100 packages of teas and coffees, the packages in each lot, respectively, being of equal weight; and respondent at the same time agreed and continues to agree with said retail dealers to deliver to them and respondent has delivered and continues to deliver to the said retail dealers, with each lot of 100 packages of teas and coffees, 100 pieces of assorted chinaware such as described in the aforesaid circulars.

In selling its packages of teas and coffees to retail dealers respondent fixed and still fixes the wholesale price of each lot of 100 packages thereof, respectively, at an amount which covered or covers the total cost of 100 pieces of such chinaware and the said 100 packages of teas or coffees and a reasonable profit thereon to respondent.

Among the retail dealers aforesaid with whom respondent agreed and still continues to agree to sell teas and coffees in accordance with proposals such as contained in the aforesaid circulars, is one Moore, a retail dealer in teas and coffees and chinaware in the State of Virginia and respondent particularly on June 13, 1923, in accordance with proposals such as contained in said circulars sold said Moore as aforesaid 100 packages of Tiger coffee and delivered from respondent's place of business in Baltimore, Maryland, to said Moore in the State of Virginia the said 100 packages of Tiger coffee together with 100 pieces of chinaware such as described in the aforesaid circulars and respondent received from said Moore the total price of $35 for the said coffee and chinaware.

Respondent during the aforesaid times and in accordance with proposals such as contained in the aforesaid circulars represented to its customers the said retail dealers including said Moore that the

total wholesale price charged to them by the respondent for the said 100 packages of teas or coffees and said 100 pieces of chinaware agreed to be delivered therewith, was the wholesale price of the teas or coffees sold to them and that the chinaware was given free by respondent to said retail dealers including said Moore.

Respondent proposed in the aforesaid circulars to its customers the said retail dealers including said Moore that the said retail dealers in reselling said teas and coffees charge an equal price per package for the same, respectively, and that the articles of chinaware delivered to them by respondent with said teas and coffees be given free to the customers of the said retail dealers including said Moore, members of the general public.

The articles of chinaware described in the aforesaid circulars and delivered by respondent to its said retail dealers including said Moore have been and are of unequal value.

In reselling said teas and coffees to the general public the said retail dealers, purchasers from and customers of the respondent, including said Moore, have agreed to and have accepted the proposals of the respondent such as contained in the aforesaid circulars and, in fixing their retail prices for the same, they, respectively, have added and still continue to add to the said total wholesale price paid by them to the respondent for each lot of 100 packages of teas and coffees, respectively, a reasonable profit to themselves, and they have fixed the retail price per package of the same to the general public, during the times above referred to, at the 1/100th part of the said total resale price of each said lot of 100 packages.

In pursuance of the proposals of respondent such as contained in the aforesaid circulars the said retail dealers, including said Moore, have during the aforesaid times offered and sold, and still continue to sell and offer for sale, to the general purchasing public the said packages of teas and coffees at an equal price per package, respectively, and have delivered and continue to deliver and to offer to the said public, without extra charge therefor, the particular article of chinaware designated by respondent upon the coupon contained in the particular package of tea or coffee so sold or offered for sale to the members of the general purchasing public.

Members of the general purchasing public during the aforesaid times have purchased and continue to purchase the said packages of teas and coffees and have received the same together with the said articles of chinaware from the said retail dealers, including said Moore, at the prices and upon the terms offered by said retail dealers, including said Moore, as above set forth.

During the times above mentioned and referred to other individuals, partnerships and corporations have likewise been and still

are engaged in selling at wholesale teas and coffees and they have, during the aforesaid times, caused and still cause the said commodities when sold by them to be transported to their purchasers, retail dealers, located in various States of the said United States other than the State of origin of the shipments of said commodities and including States, other than the State of Maryland, and into which respondent has caused and still causes such commodities when sold by it to be transported.

Among such other individuals, partnerships and corporations are many who have during the aforesaid times sold, and who still continue to sell, and to offer for sale teas and coffees at wholesale at reasonable prices to retail dealers and who do not, in connection with the sale thereof, sell to or place in the hands of such retail dealers any other merchandise upon the terms or conditions or in accordance with proposals such as contained in the aforesaid circulars, or in any way representing that such other merchandise is given free by them or by such retail dealers with such teas or coffees when the cost or price of the same has been or is to be included in the price of the said teas or coffees to the purchaser; and who do not, in connection with the sale thereof, sell to or place in the hands of such retail dealers any other merchandise to be delivered to members of the general public purchasing such teas or coffees, in accordance with any system or device of lottery or chance, whereby the members of the public receive for equal prices, respectively, packages of said teas or coffees and such other merchandise totalling, respectively, values of unequal amounts, whether or not the cost of such other merchandise has been or is to be included in the price paid or to be paid by the members of the general public purchasing such packages of teas or coffees.

The use of circulars by respondent, containing proposals or offers to give away free 100 pieces of chinaware to retail dealers or to others with the sale of 100 packages of teas or coffees, and the causing or permitting by respondent substantially the same or similar offers to be made by its agents or salesmen, when the price of the chinaware was really included, or to be included, in the price of the teas or coffees to the purchasers, and the rendering of bills or statements to purchasers for such teas, coffees and chinaware, when sold, in which no separate charge was made for such chinaware, was misleading and had the capacity to deceive the purchasers of said teas and coffees, the said retail dealers or some of them into the belief that the chinaware delivered in accordance therewith, was or would be delivered without cost to them, and was misleading and had the capacity further to deceive or mislead the said retail dealers, or some of them, into the belief that in reselling such teas and

coffees and in delivering such chinaware therewith to the members of the public purchasing the teas or coffees, they, the said retail dealers, would, in turn, be giving the said chinaware free to the said members of the public, when in reality the price of said chinaware was, or would be, included in the price of the teas and coffees paid by the public to the said retail dealers.

The placing by respondent of coupons or tickets in packages of teas or coffees upon which articles of chinaware of unequal value were designated to be delivered with said packages in accordance with the proposals or offers contained in the aforesaid circulars, or similar proposals or offers made by respondent's agents or salesmen; the proposals of respondent in the aforesaid circulars or statements of its agents or salesmen that the retail dealers purchasing said packages of teas or coffees resell the same for an equal price per package and deliver therewith the respective articles of chinaware designated upon the coupons or tickets in said packages to the member or members of the public purchasing the same without further charge for said chinaware; and the acceptance of said proposals by said retail dealer or dealers, including said Moore, and the purchase and sale by them of said packages of teas and coffees and said chinaware, constituted a conspiracy or combination between the respondent and said retail dealers, including said Moore, to sell said packages of teas and coffees and said chinaware, and said retail dealers, including said Moore, did conspire and combine with respondent and did sell at the times mentioned in the complaint to the members of the general public in accordance with said plan, method, arrangement, scheme, combination or conspiracy, whereby the members of the public purchasing said packages of teas and coffees received, respectively, by chance or lottery, packages of said teas or coffees and articles of chinaware of a total unequal value and for an equal price, respectively, to each member of the general public purchasing said packages.

The sale of packages of teas and coffees and the delivery of articles of chinaware therewith as above set forth by the respondent and the said retail dealers, including said Moore, or by any of them, had the tendency to mislead and deceive members of the general public and did mislead and deceive the general public into believing that the said articles of chinaware were given free of charge, either by chance or lottery, or otherwise, to members of the public purchasing said packages of teas or coffees.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods

of competition in commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, C. Read & Company, Inc., its agents, representatives, servants and employees, do cease and desist from directly or indirectly—

(1) Giving or delivering or from offering to give or to deliver and from combining or conspiring with others, individuals, partnerships or corporations, in giving or delivering or offering to give or to deliver articles or quantities of merchandise with or in connection with the sale or delivery in commerce of packages or quantities of teas, coffees or other commodities, by means of any plan, method, arrangement, scheme, combination or conspiracy, or otherwise, whereby, by means of coupons or tickets inclosed with or in, or distributed or delivered in connection with such packages or quantities of teas, coffees or other commodities, or by means of any system or device of lottery or chance, for equal prices paid by them, respectively, purchasers receive equal quantities or values, respectively, of the said teas, coffees or other commodities together with articles or quantities of unequal values, respectively, of such other merchandise, and whether or not the cost of such other merchandise, either wholly or in part, has been included in the price or prices paid by the purchasers for the teas, coffees or other commodities.

(2) Representing, or combining or conspiring with others in representing by circulars or other forms of advertising, or in bills or statements rendered to purchasers for teas, coffees or other commodities sold to them, or by coupons or tickets inclosed with or in, or distributed or delivered in connection with packages or quantities of teas, coffees or other commodities, or by or through agents or salesmen or in any other manner, or by any other means that articles or quantities of merchandise delivered or to be delivered with or in connection with the sale or delivery in commerce of packages or quantities of teas, coffees or other commodities are given or are to be

given or delivered free of charge to purchasers of such packages or quantities of teas, coffees or other commodities when the cost or price of such other articles or quantities of other merchandise has been or is to be either wholly or in part included in the price of the said packages or quantities of teas, coffees, or other commodities, respectively.

It is further ordered, That the respondent, C. Read & Company, Inc., shall, within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

WILLIAM SCHMIDT, TRADING UNDER THE NAME AND STYLE OF PLATELESS ENGRAVING BUREAU.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1112—March 6, 1924.

SYLLABUS.

Where an individual engaged under a trade name which included the words "plateless engraving," in the printing and sale of business and social stationery through the use of a process which involved the application to type printing while still wet, of a chemical and heat, and resulted in a raised letter effect which resembled in appearance impressions made by engraved plates or dies, known to the public as engraving, and in stationery, as produced and sold by him, resembling engraved stationery in appearance and finish; designated his process as "plateless engraving" and in his advertisements described the same as "The World's Greatest Invention. Engraved Without Plate. * * * Saving the Cost of Expensive Plates or Dies," "* * * Exactly Duplicating Copper Plate Work. Plateless Engraving Bureau"; with the capacity and tendency to deceive the public and thereby induce portions thereof to purchase said stationery so produced and sold as and for the genuine engraved product:

Held, That such misleading use of trade name, and designation of product, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. William C. Reeves for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission charges that William Schmidt, trading under the name and style of Plateless Engraving Bureau, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, William Schmidt, is an individual trading under the name and style of Plateless Engraving Bureau, with his principal office and place of business in the City and State of New York. Respondent is engaged in the business of printing and selling stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes and similar products, and causing said stationery so produced, when sold,

to be transported from his principal office and place of business in the City of New York, in the State of New York, to purchasers located in other States of the United States, and there is now and was at all times hereinafter mentioned a constant current of trade and commerce in said products manufactured by said respondent between and among the various States of the United States. In the course and conduct of his said business, respondent continuously has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. Respondent in the course and conduct of his business, as described in paragraph 1 hereof, now prints and for more than one year last past has printed invitations, announcements, calling cards, letterheads, envelopes and similar social and business stationery products by a process which he designates as "Plateless Engraving," although such process is not the process used in engraving and in no way includes the process of reproducing an impression on paper from engraved plates; that the product manufactured and sold in interstate commerce by respondent is the result of the use of a chemical in powdered form which is applied to type print while the ink is still wet; this chemical adheres to the wet ink and in passing through a baking process the heat causes it to fuse and present a raised letter effect so as to resemble in appearance or simulate the impression made from engraved plates known as "engraving."

PAR. 3. The word "Engraving," particularly when applied to invitations, announcements, calling cards, letterheads, envelopes, and similar social and business stationery, has been well known and understood by the public for a long period of years to include only such products as result from the impression made from an engraved plate in which has been stamped, cut or carved letters, sketches, designs or inscriptions from which the reproduction is made; that the process used by respondent, as set out in paragraph 2 hereof, so simulates engraving in appearance and finish that the same is calculated and has the capacity and tendency to mislead and deceive the purchaser into the belief that such product was the result of an impression made from an engraved plate commonly known to the public as "Engraving."

PAR. 4. That respondent, as a means of inducing the public to purchase his invitations, announcements, calling cards, letterheads, envelopes, and similar social and business stationery products manufactured by his said process, causes advertisements to be inserted in trade publications having general circulation throughout the several States of the United States, and distributes cards, circulars, and

other advertising matter, to purchasers and prospective purchasers in various States of the United States, in which said advertisements and advertising matter respondent falsely claims his process as "Exactly Duplicating Copper Plate Work" and producing an "Engraved and Embossed Effect," and in said advertisements and advertising matter refers to his said product as "Plateless Engraving"; that the use of the word "Engraving" by respondent, either alone or in conjunction with the word "Plateless," and also the use by the said respondent of the word "Engraving" as a part of the name under which the said respondent trades, especially when the product of said respondent is so finished as to present a raised letter effect so as to resemble in appearance or simulate engraving, were and are intended by respondent and are calculated and have the capacity and tendency to mislead and deceive the purchaser into the belief that such products were and are the result of an impression made from engraving plates commonly known to the public as "Engraving."

PAR. 5. There are a considerable number of competitors of respondent who are manufacturing engraved invitations, announcements, calling cards, letterheads, envelopes, and similar social and business stationery, which said products are made from engraved plates in which have been stamped, cut or carved letters, sketches, designs or inscriptions from which the reproduction is made, which is known to the trade and consuming public as "Engraving," which said products are sold in competition with the products of respondent.

PAR. 6. That the above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, William Schmidt, trading under the name and style of Plateless Engraving Bureau, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance herein and having filed answer to the complaint, thereupon entered into a stipulation as to the facts in which it was agreed that the statement of the facts therein should be taken by the Commission in lieu of the testimony of witnesses in support of the charges stated in the complaint and on behalf of respondent, and that the Commission might proceed forthwith, on such stipulation, to make its report stating its findings as to the facts.

Thereupon, the matter came on for final hearing before the Commission, upon the complaint, the answer and the stipulation as to the facts, and the Commission having duly considered the record, and being fully advised in the premises, makes these its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, William Schmidt, at the time of the issuance of the complaint herein and prior thereto, carried on business under the name and style of "Plateless Engraving Bureau," with principal place of business at 27 Thames Street, New York, N. Y., and at all times herein mentioned has been engaged in the business of printing and selling stationery, including invitations, announcements, calling cards, business cards, letterheads, envelopes and similar items of business and social stationery, and has caused said stationery, when sold, to be transported from his said place of business to the purchasers thereof, in and beyond the State of New York, in due course of intrastate and interstate commerce. That in the course and conduct of his said business, respondent continually has been and is now in competition with numerous persons, partnerships and corporations engaged in the production and sale of business and social stationery in commerce among the several States of the United States. That among the competitors of respondent are numerous persons, partnerships and corporations which produce and sell stationery, upon which there have been made impressions from engraved plates or dies and known to the public as engraved stationery.

PAR. 2. Respondent, in the course of his business as described in paragraph 1 hereof has printed stationery sold by him by a process which he designates as "Plateless Engraving," although such process is not the process used in producing engraved stationery and in no way includes any part of the process of making impressions on paper from engraved plates or dies; that the process so used by

respondent consists of printing upon stationery sold by him, inscriptions, designs, etc., from inked type faces, electrotypes, or similar devices, upon a type press, and while the ink on the stationery is still wet, there is applied to such ink in powdered form a chemical, and the stationery is then subjected to a baking process, in which the chemical so applied to the wet ink is made to fuse and present a raised letter effect which resembles in appearance impressions made from engraved plates or dies, and known to the public as engraving.

PAR. 3. The word "engraving," particularly when applied to business and social stationery, has been well known and understood by the public for a long period of years to include only stationery upon which impressions have been made from inked engraved plates or dies upon which plates or dies there have been made lines, letters, designs or inscriptions, by cutting or otherwise, producing same below the surface of such plates or dies. The stationery produced and sold by respondent, as set out in paragraph 2 hereof, simulates engraved stationery in appearance and finish, and when designated and advertised under a name consisting of a combination of words which includes the word "engraving," has had and has the capacity and tendency to deceive the public and thereby induce portions of the public to purchase stationery so produced and sold by respondent, under the mistaken belief that same was engraved stationery.

PAR. 4. That respondent, as a means of advertising stationery produced and sold by him, as set out in paragraph 2 hereof, and to induce the public to purchase such stationery, caused advertisements to be placed in trade papers of general circulation, and has caused advertising matter to be distributed to the public, in which advertisements and advertising matter the stationery so sold by respondent was described and referred to as follows:

"The World's Greatest Invention. Engraved Without Plate. For business and Social Stationery. Saving the Cost of Expensive Plates or Dies."

"Ask to See Our Dull-Finished Samples—Exactly Duplicating Copper Plate Work. Plateless Engraving Bureau."

CONCLUSION.

That the practices of the respondent, as set forth in the foregoing findings as to the facts, are, in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the stipulation as to the facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, William Schmidt, trading under the name and style of "Plateless Engraving Bureau", his agents and employees,

Cease and desist from using the words "Plateless Engraving Bureau" or "Plateless Engraving" or "Engraved without Plates" or "Engraved" or "Engraving" in the business signs or advertisement, offer for sale or sale of stationery, the words, letters, figures, and designs upon which have not been produced from metal plates into which such words, letters and designs have been cut.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within ninety days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

SPIER-SIMMONS & COMPANY, INCORPORATED.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1091—March 10, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of textile starches, soluble oils and textile finishing products, and in the sale thereof to owners and operators of textile mills, gave to employees of customers, without the knowledge and consent of their employers, sums of money as an inducement for them to recommend its products to their employers and with the intent and effect of securing and inducing the purchase of its products by such customers in preference to, and to the exclusion of, similar products made by its competitors, in consideration of the sums of money so paid:

Held, That such gifts of money, under the circumstances set forth, constituted an unfair method of competition.

Mr. William T. Kelley for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Spier-Simmons & Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York with its principal place of business in the city of New York, in said State, and with branch places of business in the cities of Boston, Massachusetts, and Philadelphia, Pennsylvania. It is engaged in selling textile starches, soluble oils and textile finishing products to owners and operators of textile mills located in various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city and State of New York or from one of its aforesaid branch places of business into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its aforesaid busi-

ness respondent is in competition with other individuals, partnerships and corporations similarly engaged in the sale of textile starches, soluble oils and textile finishing products to owners and operators of textile mills in interstate commerce.

PAR. 2. In the course of its said business for more than two years last past respondent has been promising and giving sums of money as gratuities to employees of aforesaid purchasers of its products without the knowledge and consent of the employers and principals of such employees as inducement to such employees to recommend said commodities of respondent and to secure and induce the purchase thereof by the aforesaid employers and principals of said employees, in preference to the like commodities of respondent's aforesaid competitors. In consideration of said money gratuities said employees have so recommended and secured or induced the purchase of respondent's said commodities by their aforesaid employers and principals, in preference and to the exclusion of, the like commodities of respondent's aforesaid competitors. Respondent still gives said money gratuities in the manner, under the circumstances and with the result all above set out.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Spier-Simmons & Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance herein and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same or in opposition thereto, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation, organized under the laws of the State of New York, with its principal place of business in the city of New York, in said State, and with branch places of business in the cities of Boston, Mass., and Philadelphia, Pa. It is engaged in manufacturing and selling textile starches, soluble oils and textile finishing products to owners and operators of textile mills located in various States of the United States, and causes said products to be transported from its said principal place of business in the city and State of New York, or from one of its aforesaid branch places of business into and through other States of the United States to the purchasers thereof at their respective places of business located in said states. There are other individuals, partnerships and corporations located in various States of the United States likewise engaged in the business of manufacturing and selling textile starches, soluble oils and textile finishing products which they sell to various users of such products and cause to be transported from their several places of business into and through other States of the United States to the purchasers thereof located in the same States in which respondent's customers are located. The volume of business and quantity of products manufactured and sold by the respondent as aforesaid is substantial and forms an important item of commerce among the several States and Territories of the United States. In the course and conduct of its aforesaid business respondent is in competition with other individuals, partnerships and corporations likewise engaged in the manufacture and sale of textile starches, soluble oils and textile finishing products in interstate commerce.

PAR. 2. In the course and conduct of its said business during the years 1922 and 1923 the respondent gave to employees of various owners and operators of textile mills using textile starches, soluble oils and textile finishing products, without the knowledge and consent of their employers, sums of money as inducements to such employees to recommend the products manufactured by the respondent and to secure and induce the purchase thereof by such operators and owners in preference to like commodities manufactured by others. During the period from about August 12, 1922 to April 12, 1923, the respondent gave to one John H. Nulty, of Woonsocket, in the State of Rhode Island, substantial sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Nulty to recommend the purchase and use by his employers of Tea Gum, a product manufactured by the respondent. Said Nulty

did so recommend the purchase and use of such product and such product was purchased and used by his employers.

During the period from about November 29, 1922 to May 12, 1923, the respondent gave to one William M. Wayness, of Pittsfield, in the State of Maine, sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Wayness to recommend the purchase and use by his employers of Dragapole Oil, a product manufactured by respondent. Said Wayness did so recommend the purchase and use of such product and such product was purchased and used by his employers.

On or about August 12, 1922 the respondent gave to one John R. Garrity, of Pittsfield, Maine, sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Garrity to recommend the purchase and use by his employers of Dragapole Oil, a product manufactured by respondent. Said Garrity did so recommend the purchase and use of such product and such product was purchased and used by his employers.

On or about September 12, 1922, respondent gave to one Arthur H. Healey, of Pittsfield, Maine, sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Healey to recommend certain fulling oil manufactured by respondent.

All of the aforesaid sums of money were given to the aforesaid persons without the knowledge and consent of their employers.

Said employees above named recommended, secured and induced their employers to purchase the products manufactured and sold by the respondent in preference to and to the exclusion of similar products manufactured by respondent's competitors, in consideration of said sums of money so paid to them and each of them as gratuities.

PAR. 3. There are a large number of manufacturers, situated in the various States of the United States, engaged in the business of manufacturing and selling textile starches, soluble oils and textile finishing products and who cause their products to be transported from their several places of business into and through other States of the United States to the purchasers thereof, who do not promise or give sums of money as gratuities to employees of the purchasers of their said products as inducements to such employees to recommend the purchase and use by their employers of such products or otherwise.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods

of competition in commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the statement of facts agreed upon by the respondent and the counsel for the Commission, filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Spier-Simmons & Company, Inc., its officers, agents, representatives, servants and employees cease and desist from directly or indirectly giving or offering to give to employees of its customers or prospective customers, without the knowledge or consent of their employers, sums of money as inducements to influence their employers to purchase or contract to purchase the products of respondent, or to influence their employers to refrain from purchasing or contracting to purchase the products of respondent's competitors.

It is further ordered, That the respondent, Spier-Simmons & Company, Inc., shall within sixty (60) days after the service upon them of a copy 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

MISHAWAKA WOOLEN MANUFACTURING COMPANY.

Docket 19—March 13, 1924.

MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence and the trial attorney's report upon the facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," [in its resale price maintenance plan] and the Commission having thereupon made an order herein, dated the 30th day of June, 1919 [see 1 F. T. C. 506 et seq.], and thereafter the proceeding and order having been reviewed by the United States Circuit Court of Appeals for the 7th Circuit, on the petition of the respondent, under the provisions of said Act of Congress approved September 26, 1914, and said United States Circuit Court of Appeals having on the 13th day of September, 1922, rendered a decision on the said petition of respondent, dismissing the same on the authority of Federal Trade Commission *vs.* Beech-Nut Packing Company, 257 U. S. 441, stating in its memorandum opinion, pur curiam, that the court approved the finding of the Commission upon the authority of that decision "Inasmuch as the record shows that the condemned practices were substantially identical with those involved" in said Beech-Nut case; and an order having been duly entered on September 16, 1922, by said Court, in accordance with said decision by which it was ordered, adjudged and decreed that the said petition of the respondent be dismissed [see 283 Fed. 1022 or 5 F. T. C. 557]; and the Supreme Court, thereafter, having denied an application by respondent for a writ of certiorari to the Circuit Court of Appeals, upon the assumption that the Federal Trade Commission would modify its order to conform to the Supreme Court's decision in the Beech-Nut case [see 260 U. S. 748 or 5 F. T. C. 557]; and whereas the order of the Commission in this proceeding included a provision that the respondent cease and desist from "(3) Refusing or threatening to refuse to sell to dealers because of their failure to maintain such prices," and whereas the Supreme Court in its decision in the Beech-Nut case

referred to eliminate a similar provision in the Commission's order in that case, holding the order in respect thereof to be too broad,

Now, therefore, be it resolved, That the following modified order be and hereby is made the order of the Federal Trade Commission herein in place of its previous order dated June 30, 1919;

Now, therefore, it is ordered, That the Mishawaka Woolen Manufacturing Company, its officers, directors, agents, servants and employees, cease and desist from fixing or controlling, or attempting to fix or control, the prices at which, or in accordance with which, its products shall be resold, by

(1) Entering into contracts, agreements or understandings with dealers, requiring or providing for the maintenance of such prices;

(2) Cooperating with dealers in obtaining information for the purpose of enforcing the maintenance of such prices;

(3) Employing any equivalent cooperative means, directly or indirectly, to bring about or enforce the resale of its products at such prices.

It is further ordered, That the respondent, Mishawaka Woolen Manufacturing Company, shall within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

THE Q. R. S. MUSIC COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 793—April 8, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of music rolls for player pianos, and in the sale thereof to retail dealers including the largest dealers in player rolls in the several states, and doing over 50 per cent of the total business done in the country in such products; in pursuance of a plan or policy directed to the maintenance of the prices which it (1) fixed for the resale by said dealers of the rolls which it sold under its own trade name and advertised nationally and locally, and which were well and favorably known and in demand, and (2) placed upon the labels of its said rolls and their containers, and made known through catalogues, price lists, etc., together with the advice that it regarded the maintenance of said prices as a matter vital to its business and one to be enforced by the refusal of sales to dealers who failed to respect the same:

(a) Requested dealer customers to report the names of price cutting competitors;

(b) Sought to induce price cutters brought to its attention through its customer dealers and its own agents and employees, to agree thereafter to observe its prices, under penalty of refusal of further sales; and to restore and observe its said prices;

(c) Refused to make further sales to persistent price cutters or to those who would not agree to respect its prices; and

(d) Withdrew the assistance which it extended to its customers under a system of cooperative advertising and selling helps, from those who failed to respect such prices;

With the result that said prices were maintained by substantially all of its dealer customers, it secured for its said rolls an advantage over the products of competitors who did not require their dealer customers to maintian resale prices, dealers in its rolls were prevented from selling the same at such lower prices as they might find adequate and warranted by their respective selling costs and efficiency, and competition among those dealer customers in the sale of said rolls was lessened or eliminated; and

Where said corporation,

(e) Entered into agreements with its dealer customers whereby said dealers bound themselves to deal in its rolls to the exclusion of competitive products, in consideration of the privilege of returning and receiving credit for, rolls which they were unable to sell, with the effect of causing dealers to discontinue or refrain from handling competitive products, and of supplementing its price maintenance policy above set forth and aiding therein, and of substantially lessening competition in the sale and distribution of such rolls; and

All with a dangerous tendency unduly to hinder competition and to create a monopoly in the manufacture and sale of music rolls for player pianos;

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition in violation of Section 5 of the Act of Congress approved September 26, 1914, and that the making of such contracts constituted a violation of Section 3 of the Act of Congress approved October 15, 1914.

Mr. John H. Bass and *Mr. Walter B. Wooden* for the Commission.

Mr. Charles L. Mahony and *Mr. Maurice J. Moriarty* of Chicago, Ill., for respondent.

COMPLAINT.[1]

I.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Q. R. S. Music Company has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That respondent, the Q. R. S. Music Company, is a corporation organized under the laws of the State of Illinois, with its principal place of business in Chicago, in said State.

PAR. 2. That respondent for more than two years last past has been engaged, and is engaged, in the business of manufacturing and selling rolls for player pianos and has caused, and causes its products, known as player rolls, sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and has carried on, and carries on, such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent produces and sells approximately 60 per cent in volume, or 70 per cent in value, of player piano rolls sold in this country; that in or about the month of January, 1922, respondent acquired the physical property of the Imperial Player Roll Company used by that company in the manufacture of music rolls; that prior thereto the said Imperial Player Roll Company did the next largest business to respondent in the sale of player piano rolls in this country, namely, approximately 25 per cent thereof.

PAR. 4. That respondent in the course of its business as described in the preceding paragraphs has employed and enforced in the

[1] As amended.

marketing of its player rolls, and still employs and enforces a policy and practice of fixing and prescribing from time to time specified prices at which player rolls manufactured and sold by it shall be resold by the retail dealers through whom such player rolls are resold to the purchasing public.

PAR. 5. That as a means of enforcing the observance and maintenance of respondent's policy and practice of fixing and prescribing resale prices for its product as described in the preceding paragraph, by the retail dealers through whom player rolls manufactured and sold by respondent are distributed, respondent has announced and made it understood generally to the trade that it would refuse to sell player rolls manufactured by it to any and all dealers who failed to observe and maintain the retail prices specified by it from time to time, as aforesaid, for player rolls manufactured by it; that pursuant to such announcement and understanding, respondent has refused to sell player rolls manufactured by it, to dealers who have failed or refused in the course of the resale of such rolls to the public, to observe and maintain the resale prices specified by respondent for such player rolls; and respondent has refused to sell player rolls to such dealers as did not give assurances that they would in the future so observe and maintain said resale prices.

PAR. 6. That, as a further means of enforcing its policy and practice of maintaining resale prices prescribed by it, respondent has employed, among others, the following methods:

(a) has requested and instructed its salesmen and agents to report dealers who sell its rolls for less than the prices prescribed by it;

(b) has requested its customers to report such price cutting by their competitors;

(c) has used the information so furnished to bring pressure to bear on such dealers, reported as cutting prices, to restore and agree to maintain the prices prescribed by it, by representations that respondent will refuse to sell to them unless they maintain its resale prices;

(d) through such information of price cutters from its salesmen, agents and customers, has induced price cutting dealers to restore its resale prices and promise to maintain them; and

(e) has used other cooperative means of securing the maintenance of its resale prices.

PAR. 7. The foregoing things done by respondent tend to constrain all retail dealers handling respondents product to uniformly sell the same to the consuming public at said resale prices prescribed by respondent and to prevent them from selling said product at such

lower prices that they deemed to be adequate and warranted by their respective selling costs and efficiency, and thus tend to suppress competition in the said product and unduly to hinder competition and obstruct the free and natural flow of commerce in the channels of interstate trade.

PAR. 8. The above alleged acts and things done by respondent constitute an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

II.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges the Q. R. S. Music Company with practices in violation of the provisions of Section 3 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. For its charges under this count, said Commission relies upon the matters and things set out in paragraphs 1, 2, and 3 of Count I of this amended complaint to the same extent as though the allegations thereof were set out in full herein, and said paragraphs 1, 2, and 3 are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. That respondent in the course of its business as prescribed in paragraph 2 of Count I herein, enters into contracts and agreements with dealers for the sale of players rolls manufactured by it by which said dealers agree and bind themselves not to buy or sell or deal in player rolls manufactured and sold by any competitor of respondent, and to deal exclusively in player rolls manufactured and sold by respondent.

PAR. 3. That the effect of such contracts and agreements, under the conditions and circumstances as alleged in the preceding paragraphs, may be to substantially lessen competition and tend to create a monopoly in the line of commerce herein described in violation of the provisions of Section 3 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon

the respondent herein, charging it with unfair methods of competition in commerce in violation of the provisions of said act; and further charging the respondent herein with a violation of the provisions of Section 3 of an Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney, Maurice J. Moriarity, and respondent having duly filed its answer admitting certain allegations of said complaint and denying others, and setting up certain new matter in defense, and hearings having been held before an examiner of the Federal Trade Commission theretofore duly appointed, and the Commission having offered evidence in support of the said charges of the complaint, and said respondent having offered evidence in its defense, which evidence was recorded, duly certified, and duly transmitted to the Commission, and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received, as heretofore set out, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, The Q. R. S. Music Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State.

(a) "Q. R. S." are letters of the alphabet adopted arbitrarily as part of the name or title and are not abbreviations of a longer title. Prior to 1910, when it was absorbed by the Melville-Clark Piano Company, Q. R. S. Music Company was an independent concern. Subsequent to that time, until 1920, Melville-Clark Piano Company conducted its player roll business under the name Q. R. S. Music Company. February 9, 1920, Melville-Clark Piano Company changed its corporate name to The Q. R. S. Music Company, the respondent herein.

(b) While The Q. R. S. Music Company has about three hundred stockholders, it is essentially a close corporation, since a majority of its capital stock is owned and held by four persons: Alfred N. Page, secretary; Thomas M. Fletcher, president; Mr. Kisselhorst and Mr. Roberts.

PAR. 2. Respondent is engaged in the business of manufacturing and selling music rolls for player pianos. It has factories for the manufacture of such rolls in Chicago, New York, San Francisco, and Toronto, and sales offices at each of these points from which it sells and distributes its said music roll products in the several States of the United States and also in foreign countries.

(a) The great bulk of the music roll product manufactured, sold, and distributed by respondent in the several States of the United States has been known as Q. R. S. player rolls, the letters Q. R. S. having been copyrighted as a trade designation for such rolls.

PAR. 3. In the course and conduct of its said business as set forth in paragraph 2 hereof, respondent has been and is in competition with other persons, partnerships, firms, and corporations engaged in the manufacture and sale of similar products in interstate commerce.

PAR. 4. (a) The commercial production and sale of player rolls have developed largely in the past twenty-five years. Since 1910 such development has been extremely rapid, as shown by the growth of respondent's annual production. According to records produced by respondent, its output in 1910 was approximately 157,000 rolls valued at $73,752; and in 1920, the banner year of its production, respondent manufactured in excess of 6,200,000 rolls valued at $3,690,601.

(b) By its rapid strides in the manufacture of music rolls, respondent has become the leading manufacturer of music rolls for player pianos in the United States, as shown by a comparison of respondent's annual output with the output of the entire industry. The estimated output of music rolls of the entire industry at the date of hearing herein was between ten and twelve million. This annual production contrasted with respondent's production in 1920 of 6,200,000 rolls, gives the respondent a control of well over 50% of the industry.

(c) Respondent's rolls sell generally at higher prices than the rolls of competitors, so that its percentage of the gross business in dollars and cents is substantially larger than in numbers of rolls.

(d) Respondent's Q. R. S. music rolls are considered in the trade as of high quality and the fact that they are nationally advertised creates a brisk demand for them. Dealers in music rolls for player pianos find their business success in this line promoted by ability to furnish their customers with Q. R. S. player rolls.

PAR. 5. Respondent sells the great bulk of its player rolls above mentioned through retail dealers in music or musical instruments, and in kindred lines permitting the stocking and sale of such accessories as music rolls, sheet music, and phonograph records. These dealers are located in the several States of the United States and in foreign countries, and are estimated to number in all about 7,500.

(a) Customers of respondent east of the Allegheny Mountains are largely served from its factory and sales office in New York City. Customers of respondent in the Ohio and Mississippi valleys are largely served from its factory and sales office in Chicago. Customers west of the Rocky Mountains are largely served by respond-

ent from its factory and sales office in San Francisco. Export business is conducted largely from the factory and sales office of respondent in New York City. Some customers in territory ordinarily served by the New York and San Francisco offices are served from the factory and sales offices in Chicago.

(b) Respondent also sells its player rolls through several jobbers, but not more than five to ten per cent of its total product is thus distributed.

(c) Respondent employs about thirty-five salesmen who sell its product to dealers and make preliminary arrangements with dealers as to the exchange of its player rolls.

(d) Respondent issues catalogs, bulletins, or price lists from time to time, listing its said player rolls. It also advertises its products nationally and locally. In its local advertisements it furnishes literature to dealers handling its player rolls, or supervises and directs advertisements of such player rolls by dealers, in local advertising mediums.

(e) Respondent sells its rolls f. o. b. factories or point of shipment to the dealers who become its distributors. Such dealers, as well as the officers of respondent consider the title to such rolls passes to the dealer purchaser as soon as respondent makes shipment and remains in said dealer while he retains possession.

(f) Respondent's Q. R. S. player rolls are priced to dealers by means of price lists and discount sheets; "Confidential Discount Sheet, 1920 Q. R. S. Rolls" provides that "on purchases under 5,000 rolls in one year the discount is 40 per cent; on purchases of 5,000 rolls within one year the discount will be 40 per cent and 10 per cent. The extra 10 will be retroactive and credited to all purchases in 1920. On purchases amounting to 12,000 rolls or more per year the discount will be 50 per cent, applicable as above."

Terms to the dealers are 30 days net with an extra 2 per cent discount allowed on all purchases paid for by the 10th of the month following the purchase. Dealers make payments ordinarily for respondent's player rolls upon these terms, such payments being in no way contingent upon the sale of the rolls by dealers.

PAR. 6. Respondent has employed in the sale of its Q. R. S. player rolls, a policy and practice of fixing and prescribing from time to time the prices at which said player rolls shall be resold by retail dealers to consumers.

(a) In connection with such resale price maintenance policy and as a means of carrying it out and enforcing it in connection with the sale and distribution of Q. R. S. player rolls, respondent has issued catalogs, price lists, and other literature in which resale prices are suggested for respondent's Q. R. S. player rolls. Re-

spondent has caused such resale prices to be placed upon the labels of Q. R. S. player rolls and upon the boxes containing such rolls.

(b) Respondent has advised dealers and has let it be known to the music roll trade generally, that it regards its resale price maintenance policy with regard to its Q. R. S. player rolls as vital to its business, and that to enforce such policy respondent would refuse to sell to any dealer who had cut the resale price of Q. R. S. rolls fixed by respondent.

(c) Such references to its resale price maintenance policy have been made by respondent in its application blanks used by dealers in initiating their purchases of Q. R. S. player rolls, in circular letters and in correspondence with the respondent's customers and its salesmen.

(d) Before listing dealers as "authorized" and before selling them Q. R. S. player rolls, respondent asks them to fill out and sign a blank application indicating the sort of merchandise carried by applicant, the distance away of the nearest Q. R. S. dealer, the number of dealers in the city where applicant is located, whether applicant has theretofore carried or sold Q. R. S. rolls, what lines of rolls are then carried by applicant, whether applicant carries player pianos and if so, what kind and from whom purchased. The applicant is asked to give three references, and near the end of the blank occurs this printed statement:

IMPORTANT.

The policies of Q. R. S. Music Company must be strictly adhered to in the marketing and retailing of rolls.

(e) This application is transmitted by respondent to the dealer with a letter requesting the applicant to fill out, sign, and return it to respondent. When the dealer is accepted by respondent as a customer he is sent a form letter in which this paragraph occurs:

Our list price insures a fair profit only, and the protection of that profit is vital to us both. We will be glad to have your cooperation in advising us of any sale of our products that comes to your notice, that is detrimental to our mutual interests.

(f) Pursuant to the aforesaid policy of resale price maintenance respondent has requested its customers to report to it competing dealers who sell Q. R. S. player rolls for less than the resale price named by respondent in its catalogs, and its customers have in fact so reported such dealers to respondent. Respondent has also received from its salesmen and agents reports concerning dealers who sell Q. R. S. rolls for less than the resale prices named by it in its catalogs.

(g) Following such reports and with such reports as a foundation, respondent has endeavored to secure from the dealers reported agreements and promises to maintain respondent's resale prices upon Q. R. S. player rolls, giving such dealers to understand that unless they did so they could no longer buy Q. R. S. player rolls from respondent.

(h) Acting upon information as to price cutting by competing dealers, received from customers, salesmen, or agents, respondent has sought and secured from such competing dealers, agreements to restore, observe, and maintain the resale prices upon Q. R. S. player rolls named by respondent in its catalogs.

(i) At the demand of a customer who was a competitor of other customers of respondent in the sale of Q. R. S. player rolls, respondent has brought pressure to bear upon such other customers to restore, observe, and maintain the resale prices upon Q. R. S. player rolls named by respondent in its catalogs, and such action has been taken as a condition upon which the demanding customer promised to continue to observe and maintain such resale prices.

(j) At the demand of customers who were competitors of other customers in the sale of Q. R. S. player rolls respondent has cut off or refused to sell such other customers, because such other customers had failed or refused to observe and maintain the resale price of Q. R. S. player rolls named by respondent in its catalogs, and such action was taken as a condition upon which such demanding customers continued to observe and maintain the resale prices named by respondent on Q. R. S. player rolls.

(k) In carrying out its aforesaid policy of resale price maintenance, respondent has refused to sell to dealers who persisted in cutting the resale price fixed by respondent for Q. R. S. player rolls.

(l) In the course of its said business respondent has refused to sell to dealers who would not promise to observe and maintain its resale price upon Q. R. S. player rolls.

(m) The resale price suggested by respondent is maintained by 99 per cent of its dealers, and the number of respondent's dealers who have cut respondent's resale price during the last ten years and who were known by respondent to have done so, has not exceeded fifty in all.

(n) In the maintenance of said resale prices upon Q. R. S. player rolls, respondent has a system of cooperative advertising and selling helps for dealers, these selling helps being extended only to dealers who maintain the resale prices named by respondent for Q. R. S. player rolls, and this cooperation is withdrawn from such dealers

as respondent refuses to sell because of their failure to maintain said resale prices.

(o) Respondent's adoption and enforcement of its policy of resale price maintenance as hereinabove set forth has secured for Q. R. S. rolls advantages in competition over the music rolls of other manufacturers, because of the fact that dealers in such rolls prefer to sell and distribute music rolls upon which the manufacturer suggests, maintains, and enforces uniform resale prices and because of the fact that certain other manufacturers, competitors of respondent, do not require their dealers to maintain resale prices.

PAR. 7. Respondent's policy of maintaining resale prices upon Q. R. S. player rolls in the manner and by the methods hereinabove set forth have had the effect of establishing a uniform price upon such rolls purchased by the consumer from any dealer; said policy has also had the effect of preventing dealers from selling such rolls at lower prices such as might be found by them adequate and warranted by their respective selling costs and efficiency. Respondent's resale price policy has also had the effect of lessening or eliminating competition between and among such dealers in the sale of Q. R. S. player rolls.

PAR. 8. Respondent, in the course of its business as hereinabove described, has entered into agreements with dealers for the sale and distribution of Q. R. S. rolls, by which such dealers undertake to deal exclusively in player rolls made and sold by respondent, and not to buy, sell, or deal in player rolls made by any competitor of respondent except such character, class, or kind of roll as is not made or sold by respondent and cannot be secured from it.

(a) During the space of about a year running from March 29, 1920, to July 21, 1921, respondent entered into such exclusive dealing agreements with numerous dealers scattered through various States of the United States, and business in Q. R. S. player rolls was carried on between respondent and such dealers pursuant to such agreements. The making of such agreements with dealers distributing Q. R. S. player rolls made and sold by respondent was the regular practice and policy of respondent.

(b) Respondent's salesmen, when calling upon such dealers, advised them that exclusive dealing arrangements might be made with respondent, and solicited them to make such arrangements. These talks of the salesmen of respondent with the dealers were often followed by respondent's sending such dealers memoranda giving specifically the conditions upon which exclusive dealing arrangements might be made.

(c) In many instances such dealers addressed letters to respondent incorporating more or less specifically in their offers of exclusive

dealing, the conditions set forth in respondent's aforesaid memoranda. These offers were accepted by respondent as made, or with modifications, and resulted in exclusive dealing arrangements between such dealers and respondent, under which were conducted the sale and distribution of Q. R. S. music rolls.

(d) This method of initiating exclusive dealing agreements was adopted to cover up the fact that such agreements were solicited by respondent and to give the impression that they were made in response to spontaneous offers from customers.

(e) The consideration flowing from respondent to such dealers for exclusive dealing in Q. R. S. player rolls in most instances included a so-called unlimited exchange privilege, by which respondent agreed to credit against future orders from the dealer the amount paid by such dealer for Q. R. S. player rolls which the dealer was unable to sell and which he returned with seals unbroken or in a salable condition, to respondent. Such return and exchange was limited by respondent in 1921 to rolls purchased from respondent within the previous four months. In some cases, also, the unlimited privilege was curtailed and the exchange privilege of the dealer was confined to a percentage of the dealer's purchases. Exchange privileges could be exercised but once a month.

(f) Such unlimited exchange as was granted its exclusive dealers by respondent, as herein described, was equivalent to a rebate upon the purchase price paid for said goods by said dealers to respondent.

(g) In addition to the unlimited exchange privilege based upon exclusive dealing, respondent gave to dealers selling and distributing both Q. R. S. player rolls and the rolls of other manufacturers, a limited exchange privilege by which such dealers were permitted to return to respondent once a month five per cent of the quantity of Q. R. S. player rolls purchased by such dealers during the previous month. In each case the return of such rolls was coupled with an exchange and the number of rolls returned was not permitted to exceed the number of new rolls ordered at the time of the return. Credit for the rolls returned applied not to accounts already contracted by the dealer making the return but only to purchases made at or after the time of the return. The limited return or exchange privilege could be exercised but once each month, and if not exercised for any one month, lapsed and could not thereafter be exercised as to purchases made for the month that had been neglected.

(h) Regulations for exchanges under the unlimited exchange privilege and under the limited exchange privilege were sent by respondent to dealers in Q. R. S. player rolls in the form of a blank

designated "Application for exchange." On the front of such blank appeared forms for listing and numbering the rolls to be exchanged, and on the reverse side appeared printed conditions or regulations, under which the exchange was made. These printed conditions or regulations, however, did not include any reference to exclusive dealing with respondent.

(i) About 1921 respondent purchased the plant and property of the Rythmodic Company, which, as a branch of the American Piano Company, was at that time manufacturing in New York City about 500,000 player rolls a year. In 1922 respondent acquired the roll business of the Cable Piano Company of Chicago, which was being conducted under the name of Imperial Player Roll Company with headquarters in the city of Chicago. Imperial Player Roll Company had been in business since 1904, and at the time of its acquisition by respondent was manufacturing about 1,000,000 player rolls a year. Respondent, after its acquisition of the Rythmodic and Imperial player roll businesses, offered to dealers with whom it had exclusive agreements for handling Q. R. S. player rolls, Rythmodic and Imperial rolls covering such selections as could be furnished in Q. R. S. player rolls. Upon Rythmodic and Imperial rolls no resale price was named and said dealers were advised that upon such rolls they might sell at any price they choose, and thus meet the demand for rolls which were lower-priced than Q. R. S. rolls, without patronizing competitors of respondent. Said Rythmodic and Imperial rolls were also sold by respondent to dealers generally without restriction as to the resale price.

PAR. 9. Such agreements for exclusive dealing as set forth in paragraph 8 hereof, under the conditions and in the circumstances therein set forth, have had the effect of causing dealers in player rolls to discontinue the handling of player rolls manufactured and sold by competitors of respondent and to prevent such dealers in player rolls from selling or distributing player rolls made by manufacturers who were competing with respondent.

(a) Respondent's unlimited exchange plan as hereinabove set forth, has caused dealers in music rolls who have exclusive trading agreements with respondent to refuse to buy, sell, deal in, or distribute the music rolls made by respondent's competitors.

(b) The agreements for exclusive dealings, as set forth in paragraph 8 hereof, have applied at various times to some 475 dealers in player rolls in the several States of the United States, and such dealers were and are in general the largest dealers in player rolls in the several States, and are distributors for a substantial part of respondent's business.

PAR. 10. Such agreements for exclusive dealing, as set forth in paragraphs 8 and 9 hereof, under the conditions and in the circumstances therein set forth, have supplemented, and supplement, the policy of respondent in naming and maintaining its resale price for Q. R. S. music rolls, and in fact have been and are a factor aiding in such resale price maintenance.

PAR. 11. The agreements for exclusive dealing, as set forth in paragraphs 8 and 9 hereof, under the conditions and in the circumstances therein set forth, have a capacity and tendency substantially to lessen competition, and do in fact substantially lessen competition in the sale and distribution of player rolls in the course of interstate commerce. The resale price maintenance policy and practice of respondent as applied to Q. R. S. player rolls, as hereinabove set forth, taken in connection with the exclusive dealing agreements as aforesaid, have a dangerous tendency unduly to hinder competition and to create a monopoly in the manufacture and sale of music rolls for player pianos in the United States.

CONCLUSION.

1. That the practices of the respondent as set forth in the foregoing findings as to the facts are, in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of Section 5 of the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

2. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions hereinbefore set forth, are in violation of Section 3 of the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel and oral argument, and the Commission having made its findings as to the facts and reached its conclusion that the respondent has violated Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

and that respondent has violated Section 3 of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,"

Now, therefore, it is ordered, That the respondent, The Q. R. S. Music Company, its officers, directors, agents, servants and employees cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured by it shall be resold by its distributors and dealers by—

1. Entering into contracts, agreements and understandings with distributors or dealers requiring or providing for the maintenance of specified resale prices on products manufactured by respondent.

2. Attaching any condition, express or implied, to purchases made by distributors or dealers to the effect that such distributors or dealers shall maintain resale prices specified by respondent.

3. Requesting dealers to report competitors who do not observe the resale price suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

4. Requesting or employing salesmen or agents to assist in such policy by reporting dealers who do not observe the suggested resale price, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

5. Requiring from dealers previously cut off promises or assurances of the maintenance of respondent's resale prices as a condition or reinstatement.

6. Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices fixed by the respondent.

It is further ordered, That respondent, The Q. R. S. Music Company, its officers, directors, agents, servants and employees cease and desist from entering into contracts, agreements or understandings or making sales or fixing a price charged therefor or discount from or rebate upon such price subject to the condition, agreement or understanding that the purchaser of respondent's product shall not deal in the goods, wares or merchandise of any competitor of respondent; and

It is further ordered, That the respondent, The Q. R. S. Music Company, shall file with the Commission, within sixty (60) days after the service upon it of a copy of this order, its report in writing stating in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

DURABLE PURE SILK FASHIONED HOSIERY, INC.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1099—April 12, 1924.

SYLLABUS.

Where a corporation engaged in the purchase of large quantities of hosiery from the manufacturers and in the sale thereof direct to consumers, and neither owning, controling nor operating any mill or factory or manufacturing the hosiery offered and sold by it,

(a) Displayed in the advertising matter used by it pictures purporting to represent the interior and exterior of the factory in which the hosiery dealt in by it was manufactured, together with matter purporting to describe the process used in such manufacture, and made statements therein to the effect that it saved the consumer manufacturer's expense in concentrating on one style and also the wholesaler's and retailer's profits;

(b) Described said hosiery in its advertisements as "Fashioned Hosiery" and so labeled the containers thereof, the fact being that said hosiery was not made by a process which resulted in a product entitled to such a designation; and

(c) Used its corporate name which included the words "Pure Silk," in the sale of hosiery, the tops, toes and heels of which were not composed of silk, but of cotton, and described said hosiery in its advertisements and on its labels as "Silk," "Silk Chiffon," "Pure Silk" and "Pure Thread Silk";

With the capacity and tendency to mislead purchasers and prospective purchasers into believing that in buying of it they were dealing with the manufacturer and eliminating all middlemen's profits, and also to mislead them in reference to the manner of manufacture and composition of said hosiery, and thereby induce the purchase thereof:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert O. Brownell for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Durable Pure Silk Fashioned Hosiery, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the

provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Durable Pure Silk Fashioned Hosiery, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal and executive offices and stock rooms located in the city of Newark, in the State of New Jersey, and is now and has been for more than one year last past, engaged in the business of selling hosiery in interstate commerce to purchasers in various States of the United States direct and/or through canvassers, solicitors, salesmen or representatives appointed by respondent as agents in its behalf and for that purpose. In receipt of orders, direct or through its agents, said respondent causes its hosiery to be shipped or transported by or through the United States mails direct to its customers from its principal office or stock rooms in the State of New Jersey to purchasers located in other states of the United States. In the course of its said business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, for more than one year last past, as a means of inducing the public to purchase its product, has caused advertisements to be inserted in publications having general circulation throughout the several States of the United States, and has distributed circulars, catalogues, prospectuses, and other advertising matter, to its canvassers, solicitors, salesmen, representatives or agents for the use and purpose of inducing the public to purchase its product, and in which said advertising matter respondent has represented itself as the manufacturer of its product, and has caused to be inserted in the catalogues or prospectuses furnished its agents for soliciting purposes pictures of the exterior and interior of a mill or factory purporting to be and described as pictures of a mill or factory owned or operated by the respondent. The aforesaid canvassers, solicitors, salesmen, representatives or agents of said respondent exhibit said catalogues or prospectuses, and other advertising matter, to purchasers and prospective purchasers when soliciting orders from them for the purpose of inducing said purchasers or prospective purchasers to place orders for respondent's product.

PAR. 3. Respondent has not during the aforesaid time mentioned owned, controlled, or operated, and does not now own, control, or operate any hosiery mill or factory whatsoever and has not during

said time and does not now manufacture the hosiery offered for sale or sold by it, as hereinbefore described, and has filled and now fills its said orders for said hosiery from its stock purchased by the said respondent from the manufacturers thereof.

PAR. 4. The above alleged acts and practices of respondent have the capacity and tendency to and/or do mislead or deceive the purchasers and prospective purchasers of the hosiery offered for sale and sold by respondent, as above set out, into the erroneous belief that said hosiery is being sold by the manufacturer thereof through its said canvassers, solicitors, salesmen, representatives or agents direct to such purchasers, thus eliminating all middlemen's profits and at a saving to such purchasers of the amounts of such profits, and tend to and do cause such customers to purchase said hosiery in that belief.

PAR. 5. Further in the course and conduct of its said business, respondent offers through its said canvassers, solicitors, salesmen, representatives or agents certain hosiery falsely denominated, represented and described in the aforesaid advertising literature to be what is known to the public as "Fashioned Hosiery," which is hosiery made of a fabric knit flat and of uniform texture and by the process known to the knitting trade as widening and narrowing is made to conform to the shape of the leg, retaining said uniformity of texture and being closed in the back with a stitched seam. The fact is that the hosiery offered by respondent as "Fashioned Hosiery" is what is known to the trade and public as "Seamless Hosiery," being hosiery knit over a cylinder and made to conform to the shape of the leg by tightening and loosening the threads at appropriate points and places, and/or by cutting out the fabric at the back of the ankle and sewing the same together, and in order to aid and further the aforesaid deception respondent causes the said seam to be extended the entire length of the boot of said hose in order to simulate what is known as "Fashioned" or "Full Fashioned" hosiery knit by the process hereinbefore stated. Seamless hosiery is inferior to fashioned hosiery in that the same has a tendency to stretch at the ankle and not retain its shape to the leg as hosiery known to the trade as "Fashioned" or "Full Fashioned," and the use by the respondent of the word "Fashioned" in denominating and describing its product together with the use of the said simulated seam, have the capacity and tendency to and/or does mislead or deceive the purchasers and prospective purchasers of said hosiery into the belief that its said product is fashioned hosiery or full fashioned hosiery, and tends to and does cause such customers to purchase said hosiery in that belief.

PAR. 6. Further in the course and conduct of its said business respondent offers through its said canvassers, solicitors, salesmen, representatives or agents certain hosiery falsely denominated, represented and described in the aforesaid advertising literature and on the boxes containing the same as "Pure Thread Silk Hose," when in truth and in fact the said hosiery so denominated, represented and described in both its literature and box labels is not made entirely of pure thread silk but the heel, toe and top of said hosiery are of knit cotton fabric, and the use by the respondent of the words "Pure Thread Silk Hose" in describing or denominating its product has the capacity and tendency to and/or does mislead or deceive the purchasers and prospective purchasers of said hosiery into the belief that the said product of respondent is made entirely of silk and tends to and does cause such customers to purchase said hosiery in that belief.

PAR. 7. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Durable Pure Silk Fashioned Hosiery, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its president, Charles S. Slavin, and an agreed statement of facts having been signed by the said Charles S. Slavin, acting in behalf of said respondent, and by counsel for the Commission, the Commission having duly considered the record and the said statement of fact, makes this its report, stating its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PAR. 1. Respondent, Durable Pure Silk Fashioned Hosiery, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal offices and stockrooms located in the city of Newark in said State. It is now and for more than one year last past has been engaged in the business of purchasing hosiery from the manufacturers thereof and selling the same to purchasers in various States of the United States. It causes the hosiery when so sold to be transported from its stockrooms in the

said city of Newark, State of New Jersey, into and through various other States of the United States to the purchasers thereof. In the course of its said business, respondent was at all times mentioned herein and still is in competition with other individuals, partnerships and corporations similarly engaged in the sale of hosiery in interstate commerce.

PAR. 2. Respondent, Durable Pure Silk Fashioned Hosiery, Inc., in the regular course and conduct of said business purchases hosiery in large quantities from the manufacturers thereof and stores same in its stockrooms in the city of Newark, New Jersey. Respondent's duly appointed agents call at the homes or business places of prospective purchasers and solicit orders by use of sample hosiery and of advertising matter which consists principally of a portfolio furnished by respondent. When an order is secured, the agent collects a deposit in cash, giving a receipt therefor; respondent upon receiving the order from the agent, ships the hosiery to the customer by parcels post, cash on delivery for the balance due. All sales are made direct to the users of the hosiery. The only advertising matter used by respondent is that which is carried by its agents as above described and shown to prospective customers for the purpose of inducing them to purchase the hosiery sold by respondent.

PAR. 3. In the portfolio of advertising matter furnished by respondent to its agents and used by them during the year 1922, appeared pictures of the exterior of a large factory building, bearing signs of "Home of Durable Hosiery" and "Durable Pure Silk Hosiery." It also contained pictures of the interior of a large factory, together with written matter purporting to describe the way in which Durable Pure Silk Fashioned Hose is made. Respondent's plan of selling such hosiery was described in said portfolio in part as follows:

> Our practicable plan of selling Durable Hosiery direct to you was also conceived with the idea of saving unnecessary steps and needless expense.
>
> Three steps we have saved:
>
> 1. Manufacturers Waste Expense—Instead of selling a large variety of hosiery which involves an enormous additional expense, we are concentrating on but one style of women's and one style of men's hosiery;
>
> 2. Wholesalers Expense—We have eliminated the necessity of your paying wholesalers expense and profits by excluding him from our merchandising plan;
>
> 3. Retail Stores Waste Expense—Neither are you asked to pay the retailer for the privilege of selling you Durable Hosiery because we sell direct to you.
>
> You benefit by our elimination of waste steps because we have simply carved out all needless manufacturing expenses and wholesalers and retailers profits and concentrated the extra saving in the production of a hose that is infinitely superior to any other hose on the market.

Other similar expressions appeared in the portfolio.

The fact is that respondent itself performs the functions of both wholesaler and retailer; it buys from the manufacturer of the hosiery and sells to the ultimate users; any profit which respondent may make is, in that sense, a "middleman's profit."

The above representations made by respondent, had the capacity and tendency to mislead and deceive purchasers and prospective purchasers, by causing them to believe that respondent was the manufacturer of the hosiery which it offered for sale and sold—thus, eliminating all middlemen's profits and effecting a saving to such purchasers of the amounts of such profits, and tended to cause such customers to purchase said hosiery in that belief.

PAR. 4. Respondent has not during the time mentioned herein owned, controlled or operated and does not now own, control or operate any hosiery mill or factory whatever and has not manufactured and does not now manufacture the hosiery offered for sale or sold by it and has filled and now fills orders for said hosiery from stock purchased by said respondent from the manufacturers thereof.

PAR. 5. In the regular course and conduct of its business as aforesaid, during the years 1922 and 1923, respondent sold hosiery in boxes labeled as "Fashioned Silk Hose." The term "fashioned" was also used to describe said hosiery in the advertising matter furnished to sales agents by respondent. The said hosiery so labeled and described was actually made by knitting on cylindrical machines and was later shaped by cutting out a small slice at the back of the ankle and sewing the stocking together again. On or about May 1st, 1923, respondent changed its advertising and its order blanks, and instead of the word "fashioned," it has since used and is now using, the word "semi-fashioned" on its order blanks only, to apply to hosiery made as above described.

PAR. 6. Fashioned hosiery is characterized by a seam at the back which is the result of joining the opposite sides of a fabric which has been knitted or woven flat and open. This fabric may be woven in form so as to make a shaped hose when closed, or the fabric may be cut to shape and joined. The best grades of "fashioned" hosiery are those knitted or woven to shape and seamed at the back, but either method produces hosiery which is fashioned, i. e., made to fit the outline of the foot, ankle and leg. In contradistinction all other hosiery is tubular or seamless produced by knitting over a cylinder in which any shaping which may be done is caused by tight knitting at some part and loose knitting at others or by cut-

ting out a part of the tube and sewing, or by drying and shrinking the stocking on a form shaped for that purpose. The word "fashioned" as descriptive of hosiery is generally understood in the trade and by the purchasing public to mean hosiery which has been knitted or woven flat to conform to the shape of the foot, ankle and leg, and sewed together. The product which respondent formerly represented as "fashioned" or "full fashioned" and which it now represents as "semi-fashioned" is not woven flat and sewed together but is tubular woven, and the seam at the back is added in part unnecessarily to simulate fashioned hosiery.

PAR. 7. The use of the terms "fashioned" and "semi-fashioned" by respondent to describe hosiery which is shaped by cutting out a piece of the material, as described in paragraph 5 herein, has the capacity and tendency to mislead customers and prospective customers and to cause them to believe that the hosiery so described has been actually knitted to conform to the shape of the leg, according to the process described in paragraph 6, and to induce them to purchase said hosiery in such belief.

PAR. 8. In the regular course and conduct of its business as aforesaid, in its advertisements, on its labels and due to its corporate name, respondent has described hosiery which it sells and offers for sale as "silk," "silk chiffon," "pure silk," and "pure thread silk." The said hosiery is actually made with tops, toes and heels of cotton and the rest of the material pure silk.

PAR. 9. The terms "silk" and "pure silk" as applied to hosiery are commonly understood both by the trade and by the purchasing public to mean hosiery composed entirely of silk. There are several companies competitors of respondent who so label hosiery composed entirely of silk.

PAR. 10. The use of the terms "silk," "pure silk," "silk chiffon," and "pure thread silk" by respondent, to describe hosiery which has tops, toes and heels of cotton has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and lead them to believe that the hosiery so described is composed entirely of silk and to cause them to purchase said hosiery in such belief.

CONCLUSION.

The practices of respondent under the conditions and circumstances described in the foregoing findings of facts are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This complaint having been heard by the Federal Trade Commission upon the complaint of the Commission and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Durable Pure Silk Fashioned Hosiery, Inc., its agents, representatives, servants and employees, do cease and desist from directly or indirectly:

1. Advertising, describing, or representing in any manner or form that respondent is the manufacturer of the products which it sells or offers for sale, unless and until it is in truth and fact the manufacturer of such products;

2. Advertising, labeling, or representing the hosiery which respondent sells or offers for sale as "fashioned" or "full fashioned," or by the use of the word "fashioned" in combination with any other word or words, unless such hosiery is actually made by joining the opposite sides of a fabric which has been knitted or woven flat and open in a form so that it makes a shaped hose when closed, or in which the fabric, so knit or woven, has been cut so that, when closed it makes a shaped hose.

3. Advertising, labeling, or representing the hosiery which respondent sells or offers for sale, as "silk," "pure silk," "chiffon silk," or "pure thread silk," unless such hosiery is actually made entirely of silk spun from the cocoon of the silk worm.

It is further ordered, That the respondent, Durable Pure Silk Fashioned Hosiery, Inc., shall within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION
v.
EASTMAN KODAK COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 977—April 18, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of positive raw film stock and making over 80 per cent of such stock manufactured in the United States, with the cooperation and assistance of an individual long intimately associated with it in maintaining in various ways its monopoly, in the manufacture, and their monopoly, in the sale, thereof, on the one hand; and manufacturers of positive prints from motion picture negatives and, as such, users of raw film stock as their raw material, and acting through their association and in response to the threat directed against them in the publicly announced acquisition by said corporation of three laboratories equipped to compete with them and with a combined capacity equal to the market demand, on the other hand; in pursuance of a plan to substantially lessen competition in the sale of positive film stock and to maintain and extend said monopoly, entered into, and carried out, an agreement whereby said manufacturers bound themselves thereafter to confine their purchases of positive raw film stock to the American made product in consideration of said corporation's refraining from operating its aforesaid laboratories, and to secure as members of their association and similarly bound, as many other manufacturers as possible; with the result that sales of imported films, theretofore amounting to many millions of feet a year, were entirely eliminated, competition in the manufacture and sale of positive film stock was practically eliminated, and the monopoly of said corporation was maintained and extended:

Held, That such practices, substantially as described, constituted unfair methods of competition.

Mr. W. A. Sweet for the Commission.

Hubbell, Taylor, Goodwin & Moser of Rochester, N. Y., for Eastman Kodak Co. and George Eastman.

Konta, Kirchwey & Michael of New York City, for Jules Brulatour.

San Ittelson & Van Voorhis of New York City, for Allied Laboratories Association and respondent members.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges

that the Eastman Kodak Company, Allied Laboratories Association, Inc., The Burton Holmes Lectures, Inc., The Craftsmen Film Laboratory, Inc., Kineto Company of America, Inc., Erbograph Company, Cromlow Film Laboratories, Inc., Palisades Film Laboratories, Inc., Claremont Film Laboratory, Inc., Film Developing Corporation, Evans Film Manufacturing Company, Inc., Republic Laboratories, Inc., Lyman H. Howe Film Company, Rex Laboratory, Inc., Tremont Film Laboratories, Inc., Mark Dintenfass, George Eastman and Jules E. Brulatour, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eastman Kodak Company, (hereinafter referred to as Eastman Company), is a corporation organized in 1892, under and by virtue of the laws of the State of New York, and having its principal office and factories located in the City of Rochester, State of New York. It is now and at all times hereinafter mentioned has been engaged in the manufacture of cinematograph film, and in the sale thereof to various corporations, firms and individuals; in the course and conduct of such business, it ships and transports such cinematograph film, by means of common carriers, from its factories in said City of Rochester, New York, to the purchasers thereof, through and into the different states of the United States and to foreign countries, in direct competition with other corporations, firms and individuals similarly engaged. Respondent, George Eastman, is now and ever since the Eastman Co.'s organization, has been the president of said corporation, and the dominant and controlling influence therein.

PAR. 2. Respondent, Jules E. Brulatour, is a resident of the City of New York, State of New York, where he is now and has been during the times hereinafter mentioned, engaged in the business of purchasing cinematograph film from the Eastman Co., and selling the same to various corporations, firms and individuals. In the sale of such cinematograph film, he ships and transports large quantities to the purchasers thereof from his warehouse in Long Island City, State of New York, and causes the Eastman Co. to ship and transport from its factories in the City of Rochester, State of New York, large quantities of such film to his said customers, through and into the different states of the United States, in competition with other corporations, firms and individuals similarly engaged.

PAR. 3. The cinematograph film, manufactured by the Eastman Co., and sold by it and respondent, Jules E. Brulatour, is of two kinds, known in the trade as "negative stock" and "positive

stock." The negative stock is that used by producers of motion pictures, in the making or photographing of a picture, to effect an original negative or master stencil; the positive stock is that used to make prints from a negative, which prints, when run through a cinematograph machine, project on a screen what is commonly known as a motion picture. The one characteristic difference as between a negative and a positive print is that in the former the blacks and whites are transposed, whereas in the latter they appear in the natural state. Any number of prints can be made from a single negative, the same as any number of ordinary photographs can be printed by a photographer from a single photographic negative.

These prints, made from the original negative of a motion picture, are known in the trade as "prints," or "motion picture films," and are the films distributed to exhibitors for their use in showing a motion picture to the public.

PAR. 4. Respondent, Allied Laboratories Association, Inc., (hereinafter referred to as the Association), is a nontrading corporation, duly organized under and by virtue of the membership corporation laws of the State of New York in August, 1921, and having as its announced object the advancement of the interest of its members. Executive offices are maintained in the City of New York, State of New York. Membership in said Association is limited to persons, firms, or corporations engaged in the business of manufacturing and selling prints of motion pictures (as described above in paragraph 3). Since its organization the Association has embraced in its membership the following:

The Burton Holmes Lectures, Inc., an Illinois corporation, with its principal office and place of business in the City of Chicago, State of Illinois;

The Craftsmen Film Laboratory, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Kineto Company of America, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Cromlow Film Laboratories, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Palisades Film Laboratories, Inc., a New Jersey corporation, with its principal office and place of business in Palisades, State of New Jersey;

Claremont Film Laboratory, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Film Developing Corporation, a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Evans Film Manufacturing Company, Inc., a New York Corporation, with its principal office and place of business in the City of New York, State of New York;

Republic Laboratories, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Lyman H. Howe Film Company, a Pennsylvania corporation, with its principal office and place of business in the City of Wilkes-Barre, State of Pensylvania;

Rex Laboratory, Inc., a New Jersey corporation, with its principal office and place of business in Cliffside, State of New Jersey;

Tremont Film Laboratories, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Mark Dintenfass, an individual, doing business under the name and style of National Film Laboratories, with his principal office and place of business at Hudson Heights, State of New Jersey.

These concerns were charter members of said organization. On or about November 1921, the Erbograph Company, a New York corporation, with its principal office and place of business in the City of New York, State of New York, joined such Association and has since that date been and is now a member. (For the sake of brevity all of the members of the Association are hereinafter referred to as members).

All of said members maintain and operate manufacturing laboratories at or adjacent to their various places of business, as above set forth, in which they manufacture positive prints from motion picture negatives for various corporations, firms and individuals, and in the regular course and conduct of their respective businesses, have been during the times hereinafter specified, and now are engaged in manufacturing and selling, and in the shipping of such prints to the purchasers thereof, located in various States of the United States, causing such prints to be transported from the states in which such members' factories and offices are situated, through and into other States of the United States.

PAR. 5. The Eastman Co. is the largest manufacturer of cinematograph film in the world, and up to and until on or about March,

1920, manufactured and sold approximately 94% of all the cinematograph film used in the United States, and manufactured and sold approximately 96% of all the cinematograph film produced in the United States. Between on or about March, 1920 and September 12, 1921, due to competition by American importers of cinematograph film manufactured in foreign countries, the sales of cinematograph film by the Eastman Co. decreased to approximately 81% of the total sales of such film in the United States. Respondent, Jules E. Brulatour, up to in or about March 1920, purchased and resold in the United States approximately 81% of all the cinematograph film sold by the Eastman Co. in the United States, and between in or about March, 1920, and September 12, 1921, said Jules E. Brulatour purchased and resold approximately 70% of all the cinematograph film sold by the Eastman Co. in the United States.

PAR. 6. Respondents, Eastman Co. and George Eastman conspired and confederated together and with respondent Jules E. Brulatour, to unduly hinder and restrain competition in the manufacture of cinematograph film and in the sale thereof in interstate and foreign commerce and to control, dominate, monopolize or attempt to monopolize the manufacture and sale of such film throughout the United States. Thereafter the Association, together with each and all of its constituent members, joined such conspiracy and aided, abetted and assisted the Eastman Co., respondent George Eastman, and respondent Jules E. Brulatour in consummating their purpose. All of said respondents further conspired and confederated together, and with one another, to unduly hinder, restrain and eliminate competition in the manufacture and sale of prints of motion picture films in interstate commerce, to fix and regulate prices to be charged for the same, and to control, dominate and monopolize, or attempt to monopolize, the business of manufacturing and selling prints of motion picture films throughout the United States.

PAR. 7. In pursuance of the conspiracy charged in paragraph 6 hereof, and as a part thereof, respondents, Eastman Co. and George Eastman caused respondent, Jules E. Brulatour, during the latter part of the year 1919, to construct or have constructed at Long Island City, State of New York, a manufacturing laboratory, known as the G. M. Laboratories, equipped for manufacturing positive prints from motion picture negatives and at about the same time or shortly thereafter, caused respondent, Jules E. Brulatour to construct or have constructed a second manufacturing laboratory equipped for the manufacture of prints from motion pictures at Fort Lee, State of New Jersey, known as the Sen-Jacq Laboratories. Respondent, Jules E. Brulatour, was then, and had been for some-

time prior thereto, the principal stockholder in Paragon, Inc., a manufacturer of prints of motion pictures located at Fort Lee, State of New Jersey, which concern was controlled by the respondents, Eastman Co., George Eastman and said Brulatour. Said respondents caused the three manufacturing laboratories just above named, to be operated by respondent, Jules E. Brulatour as separate and distinct business enterprises, without disclosing the true ownership thereof, or the fact that they were owned and/or controlled by respondent, Eastman Co. and respondent, George Eastman. And said respondent, pursuant to the conspiracy above charged, and as a part thereof, caused said Brulatour in the conduct of the business of these three manufacturing laboratories to offer to supply and said Brulatour did supply to various producers of motion pictures, positive prints at prices far below those at which competitive manufacturing laboratories could supply such prints.

In further pursuance of the conspiracy, as charged in paragraph 6 hereof, and as a part thereof, respondents, Eastman Co. and George Eastman caused respondent Jules E. Brulatour, in supplying competing manufacturing laboratories with cinematograph film, to delay deliveries of same and in some instances to temporarily shut off their source of supply. They further caused said Brulatour to discriminate as between those manufacturing laboratories, who confined their purchases of cinematograph film to that manufactured by the Eastman Co., and those manufacturing laboratories, who purchased and used some film of other manufacture, by extending to the former unusual and long terms of credit, which were denied to the latter—all this for the purpose of coercing the various manufacturing laboratories not controlled and/or operated by respondents, Eastman Co., George Eastman and Jules E. Brulatour into confining their purchases of cinematograph film to that manufactured by the Eastman Co.

PAR. 8. In further pursuance of said conspiracy, charged in paragraph 6 hereof, and as a part thereof, on or about August 24, 1921, the Eastman Co. and George Eastman caused to be transferred and assigned to respondent, Eastman Co., the lagal title and ownership of the G. M. Laboratories, Sen-Jacq Laboratories and Paragon Laboratories, above described in paragraph 7, and the Eastman Co. immediately thereafter publicly announced to the trade that it had purchased said manufacturing laboratories and that it intended to operate the same,—this for the further purpose of coercing and intimidating competing manufacturing laboratories and inducing them to refrain from making further purchases of cinematograph film manufactured by others than the Eastman Co.

PAR. 9. To further carry out and consummate the object of the conspiracy charged in paragraph 6 hereof, and as a part thereof, respondents, Eastman Co., George Eastman and Jules E. Brulatour, through the threat of operation by the Eastman Co. of the three manufacturing laboratories, named above in paragraphs 7 and 8, induced and coerced the respondent Association, together with each and all of its members, to join said conspiracy, and on or about September 12, 1921, an agreement was consummated by and between respondents, Eastman Co. and George Eastman and the respondent Association, and its members, whereby the Eastman Co. agreed to close its three manufacturing laboratories and to refrain from further operation of same in competition with the members of the Association, in consideration of which the Association members agreed to thereafter confine their purchases of cinematograph film to film manufactured in the United States, and to refuse to purchase any cinematograph film from American importers of foreign manufactured film; it being understood that the Eastman Co. would keep its said manufacturing laboratories in working order and that the Eastman Co. would reopen and operate the same in competition with the Association members, should they or any of them again purchase or use in their plants cinematograph film imported from foreign countries.

PAR. 10. In the carrying out of the agreement set forth above in paragraph 9 and in order to accomplish the purposes therein contemplated, respondent Association and the various members thereof, have since on or about September 12, 1921, confined all their purchases of cinematograph film to film manufactured by the Eastman Co., and have exploited the fact that no other film is used in their said manufacturing laboratories; various members of said Association have falsely announced to other manufacturing laboratories, and to the trade from time to time, that cinematograph film produced by manufacturers other than the Eastman Co. cannot be used to good advantage; and said Association and its members have consistently sought to induce and coerce outside manufacturing laboratories to become members thereof, and have attempted to induce and coerce such other manufacturing laboratories to agree to purchase cinematograph film from the Eastman Co., and to refuse to purchase cinematograph film manufactured by others.

PAR. 11. As a result of the carrying out of the said conspiracy, combination and agreement by and between respondents herein, the Eastman Co. has acquired and now enjoys a virtual monopoly in the manufacture and sale of cinematograph film in the United States, to the injury of other American manufacturers of such film, and to

the injury of American importers of foreign made film. As a further result thereof, competition in the manufacture and sale of prints of motion picture film, has been hindered and in some instances, eliminated, and through the combination of the members of the Association by and with the Eastman Co. and respondents, George Eastman and Jules E. Brulatour, the prices at which positive prints are sold to producers of motion pictures throughout the United States, have been fixed and standardized.

PAR. 12. The aforesaid acts and practices of said respondents considered together have a dangerous tendency unduly to hinder free competition in commerce in cinematograph films and prints of motion picture films, and to fix, regulate and control the price thereof, and are otherwise to the prejudice of the public and the respective competitors of said respondents, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents, having entered their several appearances and filed their several answers herein, and having made, executed and filed an agreed statement of facts in this proceeding (the Republic Laboratories, Inc., filed no answer but signed an agreed statement of facts) in which it is stipulated and agreed by and between respondents and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that said Commission may proceed further upon said complaint to make its report in said proceedings, stating its findings as to the facts and conclusions and entering its order thereon, and the Federal Trade Commission being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Eastman Kodak Company, is a corporation organized in 1892, under and by virtue of the laws of the State of New York, having its principal office and factories located in the City of Rochester, State of New York. It is now, and at all times hereinafter mentioned has been, engaged in the manufacture of photographic supplies, including cinematograph film, and in the sale thereof to various corporations, firms and individuals; in the course and conduct of such business it ships and transports such cinematograph film by means of common carriers from its factories in said City of Rochester, State of New York, to the purchasers thereof through and into the different States of the United States and to foreign countries, in direct competition with other corporations, firms and individuals engaged in a similar business. Respondent George Eastman was treasurer of the Eastman Kodak Company from the date of its organization to the year 1920, and has been since 1920 and is now the president of said company. At all times since the organization of the company said George Eastman has been the dominant and controling influence thereof.

PAR. 2. Respondent Jules E. Brulatour is a resident of the City of New York, State of New York, where he is now, and has been during the times hereinafter mentioned, engaged in the business of purchasing cinematograph film from the Eastman Kodak Company selling the same to various corporations, firms and individuals. In the sale of such cinematograph film, he ships and transports large quantities to the purchasers thereof from his warehouse in Long Island City, State of New York, and causes the Eastman Kodak Company to ship and transport from its factories in the City of Rochester, State of New York, large quantities of such film to his said customers through and into the different States of the United States, in competition with other corporations, firms and individuals engaged in a similar business.

PAR. 3. The cinematograph film manufactured by the Eastman Kodak Company, and sold by it and by respondent Jules E. Brulatour is of two kinds, known in the trade as "negative" stock and "positive" stock. The negative stock is that used by producers of motion pictures in the making or photographing of a picture to effect an original negative or master stencil; the positive stock is that used to makes prints from a negative, which prints, when run through a cinematograph machine, project on a screen what is commonly

known as a motion picture. The one characteristic difference as between a negative and a positive print is, that in the former the blacks and whites are transposed, whereas, in the latter, they appear in the natural state. Any number of positive prints can be made from a single negative, the same as any number of ordinary photographs can be printed by a photographer from a single photographic negative. These prints made from the orginal negative of a motion picture are known in the trade as "Prints," or "Motion picture films," and are the films distributed to exhibitors for their use in showing a motion picture to the public. The positive film is used in very much larger quantities than the negative film.

PAR. 4. Respondent Allied Film Laboratories Association, Inc., (hereinafter referred to as the Association) is a nontrading corporation, duly organized under and by virtue of the membership corporation laws of the State of New York, in August, 1921, and having as its announced object the advancement of the interests of its members. Executive offices are maintained in the City of New York, State of New York. Membership in said Association is limited to persons, firms or corporations engaged in any business which is in any way allied to or associated with the manufacture, preparation, sale or distribution of motion pictures or supplies used in connection therewith (as described above in paragraph 3). Since its organization the Association has embraced in its membership the following:

The Burton Holmes Lectures, Inc., an Illinois corporation, with its principal office and place of business in the City of Chicago, State of Illinois;

The Craftsmen Film Laboratory, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Kineto Company of America, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Cromlow Film Laboratories, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Palisades Film Laboratories, Inc., a New Jersey corporation, with its principal office and place of business in Palisades, State of New Jersey;

Claremont Film Laboratory, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Film Developing Corporation, a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Evans Film Manufacturing Company, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Republic Laboratories, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Lyman H. Howe Film Company, a Pennsylvania corporation, with its principal office and place of business in the City of Wilkes-Barre, State of Pennsylvania;

Rex Laboratory, Inc., a New Jersey corporation, with its principal office and place of business in Cliffside, State of New Jersey;

Tremont Film Laboratories, Inc., a New York corporation, with its principal office and place of business in the City of New York, State of New York;

Mark Dintenfass, an individual, doing business under the name and style of National Film Laboratories, with his principal office and place of business at Hudson Heights, State of New Jersey;

On or about November, 1921, the Erbograph Company, a New York corporation, with its principal office and place of business in the city of New York, State of New York, joined such Association, and has since that date been, and is now, a member.

(For the sake of brevity all of the members of said Association are hereinafter referred to as members.)

PAR. 5. All of said members maintain and operate manufacturing laboratories at or adjacent to their various places of business as above set forth, in which they manufacture positive prints from motion picture negatives for various corporations, firms and individuals, and in the regular course and conduct of their respective businesses, have been during the time hereinafter specified, and are now, engaged in manufacturing and selling and in the shipping of such prints to the purchasers thereof located in various States of the United States, causing such prints to be transported from the States in which such members' factories and offices are situated, through and into other States of the United States.

PAR. 6. The Eastman Kodak Company originated the manufacture commercially of cinematograph film, in the year 1895. Prior to that time no cinematograph film was manufactured commercially in the United States, or anywhere else. The Eastman Kodak Company is, and always has been, the largest manufacturer of cinematograph film in the world. From 1915 to 1919 it manufactured and

sold about 99 per cent of the positive cinematograph film consumed in the United States. From 1919 until about March, 1920, it manufactured and sold approximately 94 per cent of all the positive cinematograph film used in the United States, and manufactured and sold approximately 96 per cent of all the positive cinematograph film produced in the United States. Between about March, 1920, and September, 1921, due to competition by importers of cinematograph film manufactured in foreign countries and by small manufacturers in the United States, the sales of positive cinematograph film by the Eastman Kodak Company decreased to approximately 81 per cent of the total of such film consumed in the United States, although it sold approximately 96 per cent of the total sales of American manufactured film. In 1920 the average monthly sales in the United States of positive cinematograph film by the Eastman Kodak Company was 58,000,000 feet.

PAR. 7. In or about the year 1909, the manufacture of cinematograph film was begun by competitors of the Eastman Kodak Company in Europe, and since that time small quantities of positive film have been manufactured by competitors of the Eastman Kodak Company in the United States. From about 1909 to 1911 the Lumiere Company of Lyons, France, sold substantial quantities of positive cinematograph film in the United States.

PAR. 8. Between 1917 and 1921 there were only four other American concerns manufacturing positive cinematograph film. The Eagle Rock Company commenced manufacturing in 1917 and ceased doing business in 1920. The Bay State Film Company commenced doing business in 1919 and is still engaged therein. Powers Film Products, Inc., commenced selling in 1919 and discontinued in the early part of 1921, and has recently resumed manufacture and sale. The Ansco Company commenced selling in 1921 and is still engaged in that line of business. Of the foreign competitors, the Pathe-Cinema Company of France has been selling its film to the Pathe Company of America for a number of years. In January, 1921, it appointed a sales representative in this country, who has been selling Pathe film to producers and film laboratories. The Gevaert Company of America began selling Belgian-made film in the United States in April, 1920, and the Agfa Company began selling German-made film in the United States in January, 1921.

PAR. 9. On or about February 15, 1911, and for some time prior thereto, the respondent, Jules E. Brulatour, was the agent in the United States of the Lumiere Company of Lyons, France, above referred to, which was a manufacturer of positive cinematograph film and then the only competitor of the Eastman Kodak Company in

the sale of such film in the United States. Immediately prior to February 15, 1911, he took assignments of contracts between the Lumiere Company and certain users of positive film to whom he had been supplying Lumiere film, which contracts provide for the exclusive sale to them of positive film capable of use in manufacturing prints of motion pictures without specifying film made by any particular manufacturer, aggregating approximately 770,000 running feet of positive film per week or about 40,000,000 feet per year. The dates of these contracts range from December 28, 1910, to February 15, 1911. He represented the facts concerning these contracts and the assignments thereof to the Eastman Kodak Company and on February 15, 1911, the Eastman Kodak Company entered into a contract with him whereby it agreed "to fill all orders for positive and negative . . . film of its manufacture . . . received by it from" said Brulatour. After the signing of this contract the sales of film by the Eastman Kodak Company increased 40,000,000 feet per year. This contract has been continued up to the present time, with a few unimportant variations, and under its terms Mr. Brulatour has sold approximately 81 per cent of all the film sold by the Eastman Kodak Company in the United States.

From February 15, 1911, the date of Brulatour's contract with the Eastman Kodak Company, the relationship between Mr. Brulatour and the Eastman Kodak Company has been very intimate. The Eastman Kodak Company fixed the prices at which its film should be sold by Mr. Brulatour and Mr. Brulatour observed said prices in selling such film. Mr. Brulatour advised the Eastman Kodak Company of almost every transaction contemplated by him and of practically every act in relation to the various enterprises conducted by him which related to the sale or use of cinematograph film.

Mr. Brulatour informed the Eastman Kodak Company of his appearance before a legislative committee and of the answers to the questions put to him concerning his relations with the Eastman Kodak Company and of his refusal to answer certain questions. He consulted the Eastman Kodak Company in the matter of securing a suitable building in which to carry on the business of selling film manufactured by the Eastman Kodak Company in New York City and also concerning the selection of a permanent manager to be placed in charge of the business at Universal City, California. On December 29, 1919, the Eastman Kodak Company summoned Mr. Brulatour to Rochester to attend a conference of the Eastman Kodak Company's executives to consider the cinematograph film business, both domestic and foreign. In January, 1920, upon instructions of the Eastman Kodak Company Mr. Brulatour made a trip to Europe

for the purpose of gathering all the facts regarding cinematograph film and "particularly regarding German competition."

With full knowledge and consent of the Eastman Kodak Company Mr. Brulatour became financially interested in enterprises engaged in the business of manufacturing positive prints of motion picture films. He was a large stockholder in the Paragon Films, Inc., which owned the Paragon Laboratory, for the manufacture of positive prints of motion picture films and the Paragon Studio at Fort Lee, N. J. As early as December, 1914, Mr. Brulatour informed the Eastman Kodak Company concerning this enterprise and his interest therein. On July 26, 1918, Mr. Brulatour informed the Eastman Kodak Company that he was a large stockholder in Paragon Films; that the "Famous Players" operated the said studio under a lease and that said laboratory did most of their work as well as the "World Films" printing. Complaints were made direct to the Eastman Kodak Company concerning Mr. Brulatour's methods of operating this laboratory. On July 24, 1918, the Kalem Company complained that its largest and most unfair competitor in motion picture laboratory work was the Eastman Kodak Company's representative Mr. Brulatour. On October 18, 1918, Mr. Brulatour informed the Eastman Kodak Company that in order to avoid any further complications and to carry out its wishes he had made arrangements with Mr. William A. Brady, who was also interested in the Paragon company, to have Brady take over Brulatour's stockholdings in that company and that he was no longer a stockholder in any concern doing printing for the motion picture trade. On June 4, 1921, Mr. Brulatour was the owner of record of 1,912⅘ shares of the capital stock of the Film Holding Company, which owned the Paragon Laboratory and Studio. The statement that he was not a stockholder in any concern doing printing for the motion picture trade was intended to mislead those who had complained to Eastman Kodak Company concerning the relation of Brulatour to the production of positive cinematograph prints. Mr. Brulatour became and now is a director of "Famous Players Lasky Corporation" and other like enterprises. He became and now is financially interested in the business of some of his customers who were and are users of positive film manufactured by the Eastman Kodak Company in order to have something to say about their affairs.

Mr. Brulatour in the interest of the Eastman Kodak Company attempted to prevent the financing of the Bay State Film Company, a potential competitor of the Eastman Kodak Company in the manufacture of positive film, by Sutton, Porter & Company, bankers. He attempted to influence Ladenberg Thalman & Company,

bankers, not to finance the erection of a plant for the manufacture of motion picture film contemplated by one Mr. Barzykowski. Mr. Brulatour in the interest of the Eastman Kodak Company obtained control of the use of special machines for developing and manufacturing prints of motion picture films built by one George Maurice, and in the year 1920 with the knowledge and consent of the Eastman Kodak Company caused the G. M. Laboratory to be constructed and installed therein the machines built by said Maurice. Mr. Brulatour also obtained control of the use of special machines for developing and manufacturing prints of motion picture films built by one Sentou, and in the year 1920 with the knowledge and consent of the Eastman Kodak Company began the construction of the Sen Jacq Laboratory and the installation therein of the machines built by said Sentou. Both of these laboratories were situated at Long Island City, New York, and were built for the purpose of manufacturing prints of motion picture films.

PAR. 10. In 1920 and 1921 the importation of foreign-made film greatly increased and was the cause of considerable worry and concern on the part of Mr. Brulatour and the Eastman Kodak Company. A very large part of this foreign-manufactured film was used and consumed by the respondents herein who afterwards became members of the respondent association. The total importation of cinematograph film, sensitized but unexposed, into the United States in 1919 was 13,348,828 feet; in 1920, 99,828,522 feet; and in 1921, 182,929,398 feet.

PAR. 11. In May, 1921, the Eastman Kodak Company and Mr. Brulatour formulated a plan to have the Eastman Kodak Company openly acquire legal title to the Paragon Laboratory, the G. M. Laboratory, and the Sen Jacq Laboratory, and publicly announce to the trade that the Eastman Kodak Company had so acquired such laboratories and intended to operate the same, for the purpose of restraining competition in the use of positive raw film not manufactured by Eastman Kodak Company. On or about August 24, 1921, in carrying out the aforesaid plan, the Eastman Kodak Company with the cooperation of Mr. Brulatour, acquired at cost the legal title as of the date of June 4, 1921, to the Paragon Laboratory situated at Fort Lee, New Jersey, and the G. M. Laboratory, and the Sen Jacq Laboratory, both situated at Long Island City, New York, and on August 25, 1921, published in Wid's Daily, a trade paper, the following announcement:

The entire motion picture trade will be interested in the statement which follows, because it means a real service to the producer and through the producer to the public. The Eastman Kodak Company has not merely purchased well equipped laboratories. These laboratories will be backed by a

photographic experience of more than forty years and a technical staff that is unequalled in the photographic world. It means economy in operation—but it means even more than that. Obviously the future development of the motion picture industry depends upon good pictures not merely from the producer's standpoint but likewise from the technical standpoint. Every resource of the Eastman Kodak Company will be employed, therefore, in the production of perfect prints—prints that are worthy of the superior raw stock upon which they are made. The linking up of the manufacturer of the film itself and the actual reproduction of the prints, cannot fail to result in higher technical standards that are bound to benefit the entire industry.

Over a year ago the Eastman Kodak Company in answer to certain inquiries, sent out the following letter:

ROCHESTER, N. Y., *July 9, 1920.*

Referring to a recently published statement in one of the motion picture trade papers to the effect that the Eastman Kodak Company will within six months have sufficient laboratory facilities to print practically the entire amount of raw film turned out by this company, we desire to state we have no direct or indirect outside laboratory interests and no such action is at present under consideration. Any departure from our existing policy could arise only from a contingency, at present unseen, which would make such a step necessary to protect our raw film interests.

Yours very truly,

EASTMAN KODAK COMPANY.

In pursuance of the policy above foreshadowed, the Eastman Kodak Company has decided that the time has now arrived when in order to protect its own interests it is necessary that it should go into the printing and developing of motion picture films for the trade generally. The result of its decision will be for the general good of the motion picture industry because of the following facts.

The Kodak Company proposes to give this new undertaking the advantages of its great technical facilities, including its research laboratory, to the end that this part of the business will be brought up to the same high standard of uniformity and excellence as its manufacture of raw film. It is the purpose of the Kodak Company to give the trade all the important savings which will be effected by the close connection of the manufacture of the raw film with its finishing. The rapidly increasing importation of foreign film and the necessity of doing everything possible to protect the American industry by instituting every economy possible, render this action at this time imperative.

In view of the foregoing the Eastman Kodak Company has purchased the G. M., Sen Jacq and Paragon Laboratories, and will continue the operation of the G. M. and Paragon Laboratories and will put the Sen Jacq Laboratory into operation as quickly as possible.

By this action, the Eastman Kodak Company proposed to give to the motion picture industry the benefit of its superior facilities and technical skill and all the economies to be obtained by uniting two heretofore separate businesses, one the manufacturing, the other, the printing, developing and finishing of motion picture film.

In carrying out this business it should be distinctly understood that the Kodak Company does not intend to confine the use of its raw film to its own laboratories, but will continue, as heretofore, to fill all demands from whatever source.

EASTMAN KODAK COMPANY.

These three laboratories have a combined capacity for manufacturing prints of motion picture films greater than the combined capacity of all the other laboratories engaged in a similar business east of Chicago. Supplying these laboratories with its own positive raw film at prices which it could make advantageous, the Eastman Kodak Company was in a position to dominate the production of positive prints from cinematograph negatives.

PAR. 12. For some time prior to 1921, the respondents who afterward became members of the Association had been disturbed by Jules E. Brulatour's connection with the Paragon Laboratory, G. M. Laboratory and the Sen Jacq Laboratory in view of his aforesaid contracts and close and intimate relationship with the Eastman Kodak Company and repeatedly complained to the Eastman Kodak Company concerning the acts of said Brulatour in connection with the operation of the said laboratories, the discrimination in the matter of deliveries of positive cinematograph film manufactured by the Eastman Company in favor of said laboratories and the delay in deliveries of such film to the said respondents who afterward became members of said Association. In May, 1921, a committee representing the said members called upon respondent George Eastman in Rochester, New York, and asked him if he or the Eastman Kodak Company were engaged in the business of making prints of motion picture films, or intended to engage therein, either directly or indirectly and received the reply that the Eastman Kodak Company had no interest in any laboratory, and had no intention of becoming interested unless it should become necessary to protect their raw film industry. The Eastman Kodak Company was at this time indirectly interested through Jules E. Brulatour in the Paragon, G. M. and Sen Jacq Laboratories and this statement was intended to coerce members of the Association and other consumers of positive raw film into the use of Eastman Kodak Company's film exclusively. The members of the Association conducted a vigorous campaign of publicity in the trade journals and by personal solicitation in an effort to retain the business enjoyed by them in the manufacture of prints of motion picture films, anticipating the commercial operation of these three laboratories by Eastman Kodak Company.

PAR. 13. After the publication on August 25 by the Eastman Kodak Company of the announcement of its acquisition and intention to operate the G. M., the Sen Jacq and the Paragon Laboratories, numerous conferences were held between representatives of the Eastman Kodak Company and a committee representing the respondent members of the Allied Film Laboratories Association in

the endeavor to preserve the competitive status of the members of the Association.

PAR. 14. On September 9, 1921, as the result of a proposition made to them by one of the large manufacturers of American raw film, which term referred to the Eastman Kodak Company, the respondent members of the Association entered into an agreement among themselves to use in their laboratories "American made raw film stock exclusively," and further agreed to an inspection of their books and laboratories in the interest of such manufacturer for the purpose of ascertaining if there had been any violation of such agreement. This agreement was as follows:

At a special meeting of the Allied Association held on September 9, 1921, Attorney Arthur S. Friend read the proposed agreement to be signed by the members of the Association to use American made raw film stock in the laboratories of the members exclusively. On motion of Mr. Dintenfass, seconded by Mr. Hedwick, the President and Secretary were authorized to sign this agreement for the Association and the Secretary was instructed to attach to the minutes a copy of said agreement after all the members had attached the signature of that corporation.

Essential portions of agreement above referred to are as follows:

WHEREAS, it has been proposed to the members of said Allied Film Laboratories Association by one of the large manufacturers of American raw film that said manufacturer would in the future, as in the past, furnish a continuous and uninterrupted supply of raw film stock to all members of the Allied Film Laboratories Association at prices as low as it supplies same to any branch of the industry in the United States, provided the undersigned agree that they will use exclusively American made raw stock.

Now, therefore, in consideration of the premises and of the mutual covenants hereinafter contained, and of the sum of One Dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

First: They jointly and severally pledge themselves to a policy of using American made raw film stock exclusively in their various laboratories, and that except for the use of so much foreign-made raw film stock as is actually on hand or under contract of purchase, they will continue hereafter so to use the said American made raw film stock exclusively so long as said manufacturer continues to furnish a continuous and uninterrupted supply of raw film stock to the undersigned, at prices as low as it supplies the same to any branch of the industry in the United States.

Second: For the purpose only of determining whether any party hereto has violated or is violating the first paragraph of this agreement, the plants, records and books of all parties to this agreement shall be open at all reasonable times to inspection and audit by Messrs. Price, Waterhouse & Company, or any other firm of certified public accountants designated by the Board of Directors of Allied Film Laboratories Association, which inspection and audit may be made at any reasonable time on the order of the President of the Allied Film Laboratories. If there has been no violation, no facts, figures or information of any kind shall be divulged to the Association or any of its members or any

other person by the said accountants except their own certificate that no violation has been or is being made by the laboratory so investigated and audited.

This agreement was signed by the following respondents: The Craftsmen Film Laboratory, Inc.; Kineto Company of America, Inc.; Cromlow Film Laboratories, Inc.; Claremont Film Laboratory, Inc.; Film Developing Corporation; Evans Film Manufacturing Company, Inc.; Republic Laboratories, Inc.; Lyman H. Howe Film Company, Rex Laboratory, Inc.; Tremont Film Laboratories, Inc., and Mark Dintenfass.

The terms, "one of the large manufacturers" and "said manufacturer," used in the foregoing agreement, refer to the respondent Eastman Kodak Company.

PAR. 15. This agreement was communicated to Eastman Kodak Company and on September 14, 1921, the Eastman Kodak Company wrote to the respondent members of the Association that it would not operate the Paragon, G. M., and Sen Jacq laboratories, commercially, so long as the said members adhered to their agreement of September 9, 1921, and that it would cooperate with said members "to protect them against any invasion of foreign raw film stock." This communication is as follows:

To the Members of the Allied Film Laboratories Association, Inc.

GENTLEMEN: In announcing to you on August 23, the purchase by this company of the G. M., Sen Jacq and Paragon Laboratories, we made it plain that the reason for this step was primarily the rapidly increasing importation of foreign film and the necessity of doing everything possible to protect the American industry. We felt that the time had come when that step was rendered imperative.

At the same time, we were very reluctant to take that action, both because we were entering upon a new business and because we realized the effect upon that business, in which you were already established. We are very glad, therefore, to hear from you today that it is your intention to use entirely American made film and that in processing American made film there will be no discrimination in price or otherwise against film manufactured by this company.

In view of this it is proper that this company state its position and policy frankly, which it purposes not to depart from unless it should become necessary to do so to protect its raw film industry. Your policy as above stated will as long as you adhere to it furnish, we believe, adequate protection to that portion of our business.

This company will complete the Sen Jacq Laboratory, equip it, and maintain it in a condition for immediate use, but will not operate any of these laboratories for commercial purposes, except that we will operate the G. M. Laboratory commercially up to November 1st, 1921, and the Sen Jacq Laboratory for not more than two months after its completion and in any event we shall not process more than 500,000 feet per week whether in one or the other or both of these laboratories.

It is the intention, however, to carry on experiments in all of these laboratories from time to time, but not to distribute any product to the trade except as above stated, and not, either directly or indirectly, to be interested in any film laboratory in competition with the members of the Allied Film Laboratories Association. This company will in the future, as in the past, furnish a continuous and uninterrupted supply of raw film stock to all members of the Allied Film Laboratories Association at prices as low as it supplies the same to any branch of the industry in the United States.

This company will cooperate with the members of the Allied Film Laboratories Association to protect them against any invasion of foreign raw film stock.

We understand that it is your purpose to extend your Association as rapidly as possible and to make its membership include substantially all of the commercial laboratories in the United States, and to arrange among your members for an understanding and agreement that they will use exclusively American made raw stock.

As long as your Association adheres to its intention above expressed, the company will not sell any of the above laboratories without giving to your Association notice of such intention and the privilege to select a purchaser from among the members of your Association at the same price and upon the same terms as those of any bona fide offer which we may have for the property.

We feel that we should call your attention to the importance of keeping the price for processing film in your laboratories at all times at a reasonable figure. Any attempt to establish or maintain an unreasonable price will result only to the disadvantage of yourselves and all American manufacturers of raw film, and any reduction in price of raw film made by any American manufacturer such as this company has recently made should be fully reflected in the price of processed film, as such reductions are made for the purpose of benefiting the ultimate consumers of the film, and not the laboratories.

We trust this letter will be of assistance to you in perfecting your organization and we give it to you at this time as an evidence of our earnest desire to cooperate with you in the protection and advancement of the laboratory branch of the motion picture industry.

Yours very truly,

EASTMAN KODAK COMPANY,

(Signed) GEO. EASTMAN, *President.*

PAR. 16. The Eastman Kodak Company and the Association each then publicly announced their aforesaid respective actions. In pursuance of such action the Eastman Kodak Company thereafter ceased to operate the Paragon and G. M. Laboratories, completed but never operated the Sen Jacq Laboratory, but continued to maintain all of the said laboratories in a condition for immediate use and respondent members of the Association, after September 14, 1921, confined approximately all their purchases of cinematograph film to that manufactured by the Eastman Kodak Company and have refused, and continued to refuse, to purchase any cinematograph film from American importers of foreign manufactured film, and have consistently sought to induce other laboratories manufacturing prints of motion pictures to become members of said Association,

to agree to purchase cinematograph film of American make and to refuse to purchase any foreign-manufactured cinematograph film. The Eastman Kodak Company on September 16, 1921, and again on November 2, 1921, made an inspection of the laboratories operated by the members of the Association for the purpose of ascertaining whether or not such members were using any foreign-manufactured cinematograph film. The foregoing acts and conduct of the respondents, together with the agreement referred to in paragraph 14 hereof, and the document dated September 14, 1921, above referred to, constitute an agreement, understanding and obligation by and between the respondents herein.

PAR. 17. On February 28, 1923, after the investigation of the matter involved in this cause was commenced by the Federal Trade Commission but before the issuance of the complaint herein, the respondent Eastman Kodak Company wrote to the respondent members of the Allied Film Laboratories Association as follows:

ROCHESTER, N. Y., *February 28, 1923.*

To the Members of the Allied Film Laboratories Association, Inc.

GENTLEMEN: Referring to our letter to you of September 14, 1921, we wish at this time to advise you of a change in our policy as outlined in that letter.

From and after this date we do not wish you to feel obligated in any way to use in your laboratories only American made films, and whether we open for operation the laboratories which we control, or not, will not depend in any way upon the action of the members of your Association with respect to the kind of film used in their laboratories.

We trust you will understand that this action is taken by us in the interests of yourselves as well as in our own.

Very truly yours,

EASTMAN KODAK COMPANY,

(Signed) GEORGE EASTMAN, *President.*

The foregoing document constitutes an affirmation of the fact that there had been an agreement, understanding and obligation entered into by and between the Eastman Kodak Company and the respondent members of the Allied Film Laboratories Association.

PAR. 18. During the first eight months of 1921 the Gevaert Company sold Belgian-made film to members of the Association to the amount of 8,650,440 feet; the Pathe-Cinema Company sold them French-made film to the amount of 2,616,531 feet; the Agfa Company sold them a substantial part of the importation of German-made film which in 1921 amounted to 56,291,000 feet. Since about September 14, 1921, neither the Gevaert Company, the Pathe-Cinema Company, nor the Agfa Company has sold any film to members of the Association.

CONCLUSIONS OF FACT.

PAR. 19. In 1921, and for a long time prior thereto, the Eastman Kodak Company had a substantially complete monopoly of the manufacture of positive cinematograph film and an absolute monopoly of the manufacture of negative cinematograph film in the United States. In 1921 and since February 15, 1911, Jules E. Brulatour had a substantially complete monopoly of the sale of positive cinematograph film manufactured by the Eastman Kodak Company. In 1921 and for a long time prior thereto the Eastman Kodak Company and Mr. Brulatour together had a substantially complete monopoly of the sale of positive and negative cinematograph film in the United States.

PAR. 20. It was the purpose and intent of Eastman Kodak Company from February 15, 1911, when it entered into the relation with Jules E. Brulatour set out in paragraph 9 whereby it procured the substitution of its own positive film for that of the Lumiere Company to the extent of 40,000,000 feet per year, to maintain its monopoly in the manufacture of positive film and the monopoly in the sale of such film which it possessed in conjunction with Jules E. Brulatour and this purpose was manifested through the actions of Brulatour as the undisclosed representative of Eastman Kodak Company. In this capacity and in the interest of Eastman Kodak Company as well as indirectly for his own benefit, Brulatour first sought to obtain an influential and later a dominant position in the business of making positive prints in which the raw material is positive film stock. Brulatour obtained the control of the Paragon laboratory but when his ownership of this control became embarrassing to Eastman Kodak Company, Brulatour transferred his stock interest in such a manner that while he was able to announce that he had no further interest in the business of making positive prints, he was able at the time when the Eastman Kodak Company later concluded to enter the field of the manufacture of positive prints, to regain control of the Paragon laboratory and pass this ownership over to Eastman Kodak Company. In furtherance of the monopolistic purpose Brulatour acquired the rights to the processes and devices for making positive prints which originated with George Maurice and as well the processes and devices which originated with one Sentou and thereafter built the G. M. laboratory which was equipped with the Maurice process and the Sen Jacq laboratory which was equipped with the Sentou process. These three laboratories nominally owned by Brulatour were the expression of the purpose of Eastman Kodak Company and Brulatour to dominate the business

of making positive prints from cinematograph negatives as the most effective means of maintaining and extending the monopoly of the Eastman Kodak Company in the manufacture and sale of positive film stock. Competitors were alarmed by the activities of Brulatour and the Eastman Kodak Company revealed the purpose which animated Brulatour and its own intimate connection therewith by the announcement that it would not go into the business of making prints unless it became necessary to do so to protect its business of manufacturing and selling positive film stock which was equivalent to the affirmative statement that it would go into that business if competition in the sale and use of other positive film stock continued. Such competition did continue and Eastman Kodak Company in order to maintain its monopoly in the manufacture and sale of positive film stock, attempted and intended to extend its monopoly into and over the use of positive film stock in the making of positive prints from cinematograph negatives. By arrangement with Brulatour, the three laboratories, Paragon, G. M., and Sen Jacq were conveyed to Eastman Kodak Company at cost and that company announced its entrance upon the manufacture of positive prints. This announcement, coupled with the openly declared ownership of these three laboratories, constituted an effective threat of overpowering competitive force before which the respondent Association's members promptly capitulated. They agreed among themselves to use only American-made positive film which was a disguised recognition of and acquiescence in the Eastman Kodak Company's positive film monopoly and by the execution of this agreement and the communication of its terms to Eastman Kodak Company the persons, firms and corporations signatory and those who subsequently ratified it by their conduct, unwillingly became parties to the conspiracy to maintain and extend the monopoly of Eastman Kodak Company in the manufacture and sale of positive film and to restrain trade therein, previously conceived and operated by Eastman Kodak Company and Jules E. Brulatour. With the surrender of the members of respondent Association of competitive selection in the positive film which they used, the object of the conspiracy was obtained, competition in the manufacture and sale of positive film stock was practically eliminated and the monopoly of Eastman Kodak Company in the manufacture and sale of positive film stock was effectively maintained.

PAR. 21. The Commission takes judicial notice of the decision in the case of United States *v.* Eastman Kodak Company, 226 Fed. 62, wherein it was held that the acquisition by the defendant of the capital stock, property, plants, and good-will of approximately

twenty enterprises engaged in the business of manufacturing and selling photographic material in competition with the defendant was for the purpose of monopolizing interstate trade or commerce by unfair methods which tended to and did diminish or destroy the business of its competitors, and, in view of the fact that such plants were dismantled and the businesses concentrated by the defendant at Rochester, it was evident that they were not actually required by the defendant in carrying on its business but were acquired with an idea of monopolizing trade. The Commission finds that the acts of the Eastman Kodak Company and Mr. Brulatour in acquiring the three laboratories before mentioned, and in failing to operate the same but maintaining them in readiness for immediate operation are analogous in their purpose and effect to the acts of the defendants in the case of United States *v.* Eastman Kodak Company, above referred to.

PAR. 22. The agreement or understanding entered into by and between the respondent members of the Association and the agreement or understanding entered into by and between said respondent members of the Association and the Eastman Kodak Company, above referred to, were made in pursuance of a plan conceived by the Eastman Kodak Company, George Eastman, Jules E. Brulatour and the Association, and were for the purpose of and have the effect of substantially lessening competition in the sale of positive cinematograph film in interstate and foreign commerce, and tend materially to sustain the monopoly already existing in the Eastman Kodak Company, and substantially tend to perpetuate said monopoly.

PAR. 23. The ownership by the Eastman Kodak Company of the Paragon, G. M. and San Jacq laboratories, and the maintenance by it of the said laboratories in condition for immediate use for the manufacture of positive prints of motion picture films in competition with the respondent members of the Association, constitute a threat and had, and continue to have, the effect of inducing, compelling and coercing manufacturers of positive prints of motion picture films to purchase and use only positive cinematograph film stock manufactured by the Eastman Kodak Company, and of obstructing, hindering, suppressing and eliminating competition in the manufacture and sale of positive cinematograph film in interstate and foreign commerce, and of maintaining the monopoly already attained by the Eastman Kodak Company.

PAR. 24. The acts of the respondents, as set forth in the foregoing paragraphs, constitute a conspiracy or combination in restraint of trade, in interstate and foreign commerce, and had, and continue to have, the effect of retaining, maintaining and extending the monopoly of the Eastman Kodak Company in the manufacture and sale of

positive raw cinematograph film, and of substantially lessening competition in the sale of such film, in interstate and foreign commerce; of hindering, restraining and preventing competitors and prospective competitors of the Eastman Kodak Company from establishing enterprises for the manufacture and sale of positive raw and cinematograph film; and of substantially lessening competition in the manufacture and sale of positive prints of cinematograph films, in interstate and foreign commerce.

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its power and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts, with its conclusions that the respondents have violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondents, Eastman Kodak Company, its officers, agent and employees, George Eastman, Jules E. Brulatour, The Allied Film Laboratories Association, Inc., its officers, agents and employees, The Burton Holmes Lectures, Inc., The Craftsman Film Laboratory, Inc., the Kineto Company of America, Inc., the Erbograph Company, the Cromlow Film Laboratories, Inc., the Palisades Film Laboratories, Inc., the Claremont Film Laboratory, Inc., the Film Developing Corporation, the Evans Film Manufacturing Company, Inc., the Republic Laboratories, Inc., the Lyman H. Howe Film Company, the Rex Laboratory, Inc., the Tremont Film Laboratories, Inc., their respective officers, agents and employees, and Mark Dintenfass, his servants, agents and employees, and each of them, forever—

Cease and desist from conspiring, combining, confederating, agreeing and cooperating between or among themselves to hinder and restrain competition in the manufacture and sale of positive raw cinematograph film stock and to maintain and extend or attempt to

maintain and extend the monopoly of the Eastman Kodak Company in the distribution and sale of positive raw cinematograph film stock, in interstate and foreign commerce, by—

1st. The acquisition and equipment by the Eastman Kodak Company of the Paragon Laboratory, the G. M. Laboratory and the Sen Jacq Laboratory, whose combined capacity equals the market demand for printing and developing positive prints of cinematograph films from exposed and developed cinematograph films, for the purpose of extending its business to include the making and selling of such prints.

2d. The use by the Eastman Kodak Company of the ownership and possession of the said Paragon, G. M. and Sen Jacq laboratories and their equipment and capacity for producing positive prints of cinematograph films from exposed and developed negative cinematograph films to induce, compel and coerce the Allied Film Laboratories Association, Inc., and its members, to use in their laboratories for the manufacture of positive prints of cinematograph films, exclusively, American made positive raw cinematograph film stock of which the said Eastman Kodak Company has a monopoly in the manufacture and sale thereof.

3d. The agreement or understanding by and between members of the Allied Film Laboratories Association, Inc., and the Eastman Kodak Company that the said members will use American made positive raw cinematograph film stock, of which said Eastman Kodak Company has a monopoly in the manufacture and sale thereof, exclusively, and particularly to the exclusion of foreign manufactured positive raw cinematograph film stock, provided the Eastman Kodak Company will not operate commercially the said Paragon, G. M. and Sen Jacq laboratories in competition with the laboratories operated by said members of the Allied Film Laboratories Association, Inc.

4th. The agreement or understanding entered into by and between the Eastman Kodak Company and the members of the Allied Film Laboratories Association, Inc., that the Eastman Kodak Company will not operate commercially the Paragon, G. M. and Sen Jacq laboratories in the manufacture and sale of positive prints of cinematograph films in competition with the laboratories operated by said members, provided that said members use and continue to use American made positive raw cinematograph film stock, of which the Eastman Kodak Company has a monopoly in the manufacture and sale thereof, exclusively in the manufacture of positive prints or cinematograph films from exposed negative cinematograph films and the sale thereof.

5th. The continued ownership by the Eastman Kodak Company of the Paragon, G. M. and Sen Jacq laboratories and the maintenance of the same in readiness for immediate operation for the production of positive prints of cinematograph films, or any other dominant control of the production, or capacity for production, of positive prints of cinematograph films from exposed negative cinematograph films.

6th. Utilizing any other equivalent means, not hereinbefore stated, to accomplish the object of unfairly forestalling, preventing, hindering or restraining the manufacture and sale of positive raw cinematograph film stock and the making of positive prints of cinematograph films from exposed negative cinematograph films, or the sale thereof, in interstate and foreign commerce.

It is further ordered, That for the purpose of preventing the maintenance and extension of the monopoly of the Eastman Kodak Company in the manufacture and sale of positive raw cinematograph film stock to the use thereof in making positive prints of cinematograph films and of restoring competitive freedom in the distribution and sale of positive raw cinematograph film stock, the Eastman Kodak Company shall, with all due diligence, sell and convey the said Paragon, G. M. and Sen Jacq laboratories to parties not connected directly or indirectly in interest with the Eastman Kodak Company.

It is further ordered, That the respondents, within 120 days from the date of the notice hereof file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

OPPENHEIM, OBERNORF & COMPANY, INCORPORATED, DOING BUSINESS UNDER THE TRADE NAME AND STYLE SEALPAX COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 887—April 19, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of underwear and in the sale thereof to jobbers and wholesalers under its trade or brand name; in pursuance of a plan or policy adopted by it and directed to the maintenance of the resale prices fixed by it, which it made known to the trade through circulars, price lists, etc., together with requests for and insistance upon their observance under penalty of refusal of further sales, to the end that it might thereby provide for, and insure to, all its jobber and wholesaler customers the full profit arbitrarily fixed and established by it for the handling of its goods and obtain their active support and cooperation in eliminating price cutting;

(a) Placed upon its bills and invoices a legend to the effect that the sale involved was made in consideration of the maintenance of its resale prices by the purchaser;

(b) Notified jobber and wholesaler customers that its prices must be maintained;

(c) Guaranteed those who maintained its prices, against any decline in the prices of its products to them, as a consideration for their so doing, together with notice that any price cutting on their part would work a forfeiture of such privilege;

(d) Requested its said customers to notify it of price cutting; and made such reports the basis of investigation and of appreciative acknowledgment to those making the same;

(e) Eliminated price cutters reported by competitors in those communities where competition was keen, and its prices were not strictly maintained;

(f) Kept a card list wherein price cutters were noted as concerns to be refused further supplies;

(g) Reinstated price cutters upon the receipt of assurances that they would thereafter respect its prices; and

(h) Added new customers to its list only upon the giving of similar assurances;

With the result that the active support and cooperation of jobbers and wholesalers, including the less efficient and higher cost concerns, was enlisted in enlarging the sale of said price maintained product, to the prejudice of competing manufacturers who did not require maintenance of resale prices on their products, price competition in the distribution of said underwear among jobbers and wholesalers was eliminated, jobbers and wholesalers and especially the lower cost and more efficient establishments were prevented from selling its products at prices which they

deemed adequate and warranted by their costs and selling efficiency, and such portions of the public as required or preferred its products were compelled to pay enhanced prices therefor:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Thomas H. Baker, jr., for the Commission.

Haman, Cook, Chesnut & Markell, of Baltimore, Md., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Oppenheim, Oberndorf & Company, Incorporated, doing business under the trade name and style Sealpax Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Maryland with its home office and a place of business in the City of Baltimore in said State. It also operates a place of business in the City of New York, State of New York. Respondent at all times hereinafter mentioned has been and still is engaged in the manufacture of ready made clothing, underwear and other garments and the sale thereof to wholesale dealers throughout the United States. As one branch of its aforesaid business, respondent is engaged in the manufacture of a certain brand of underwear named by it "sealpax" which said underwear it deals in and sells to said wholesale dealers under the trade name and style of "Sealpax Company." The charges of this complaint relate only to respondent's said business in "sealpax" underwear, hereinafter referred to as underwear. Respondent delivers said underwear when sold by it as above set out by causing the same to be transported from its said place of business in the City of Baltimore or from its said place of business in the City of New York to said purchasers at points in various States of the United States in addition to and other than the States of New York and Maryland. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of underwear in interstate commerce, and with the trade generally.

PAR. 2. For more than two years last past, respondent has maintained and enforced and still maintains and enforces a schedule of uniform prices fixed by it at which its aforesaid wholesaler-vendees were and are required by respondent to resell said underwear to retail dealers, and adopted and employed and still employs a system for the maintenance and enforcement of said resale prices wherein respondent secured and still secures the cooperation of said wholesale-dealer vendees. In the course of said cooperative enforcement of said system, respondent has employed and still employs the following means, among others, by which respondent and its said wholesale customers undertake to prevent others from obtaining respondent's products at less than the prices designated by it:

(*a*) Makes it generally known to the trade through letters, personal interviews and other means that it expects and requires said vendees to maintain and enforce said resale prices;

(*b*) Receives from said vendees reports of the names of wholesalers who fail to observe and maintain said resale prices, and upon obtaining said reports urges the offenders to cease selling below said resale prices, and seeks to coerce said offenders into such maintenance by methods of intimidation and coercion as hereinbelow set out;

(*c*) Threatens to refuse to sell and does refuse to sell its underwear to wholesale dealers who fail to observe and maintain said resale prices;

(*d*) Exacts promises and assurances from said offenders that they will thereafter maintain said resale prices, as a condition of further supplying them with its said underwear;

(*e*) Enters into informal arrangements, agreements and understandings with various wholesale dealers, including said offenders, for the maintenance by them of said resale prices as a condition of opening accounts with said dealers or of continuing to fill their orders for its products;

(*f*) Uses other equivalent cooperative means to enforce said system of resale price maintenance.

PAR. 3. The above alleged acts and things done by respondent had and still have the capacity and tendency to constrain all wholesale-dealers handling respondent's said underwear to uniformly sell the same to their dealer-customers at said prices fixed by respondent, to prevent said wholesale dealers from selling said products at such less prices as they might and may deem to be adequate and warranted by their respective selling costs and efficiency, and hence to hinder and suppress all competition in the wholesaling of said products,

and to hinder and restrain competition between retail dealers therein. Respondent's said practices therefore tended and still tend unduly to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 4. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Oppenheim & Oberndorf, Inc., doing business under the trade name and style, Sealpax Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent, Oppenheim, Oberndorf & Company, Inc., having filed its answer, and testimony having been taken, thereupon this proceeding came on for final hearing, and the Commission being fully advised in the premises, upon consideration thereof makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Oppenheim, Oberndorf & Company, Inc., is now and for more than two years last past has been a corporation organized and existing under the laws of the State of Maryland, with its home office and place of business in the City of Baltimore in said State. It also operates a place of business in the City of New York, State of New York, and manufacturing plants in Maryland, Pennsylvania and Virginia. For more than two years last past respondent has been and is now engaged in the manufacture of underwear and other garments and in the sale thereof in interstate commerce to wholesale dealers throughout the United States. As one branch of its aforesaid business, respondent is engaged in the manufacture of a certain brand of underwear named by it "Sealpax", which said underwear it deals in and sells to jobbers and wholesalers under the trade name and style of "Sealpax Company", the said "Sealpax" underwear being inclosed or sealed in a glassine paper envelope. The findings of facts herein relate only to respondent's said business in "Sealpax" underwear, hereinafter re-

ferred to as underwear. Respondent delivers the said underwear, when sold by it as above set out, by causing the same to be transported from its said place of business in the City of Baltimore to the purchasers thereof at points in various States of the United States and the District of Columbia. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture of underwear and in the sale thereof in interstate commerce.

PAR. 2. Respondent sells its product to jobbers and wholesalers engaged in the drygoods and notions business, who, in turn, resell to retailers in this line. The said jobbers and wholesalers number between 300 and 400, and are located in the larger cities of the various States of the United States and in the District of Columbia, where they are engaged in active competition with each other in their respective localities in the sale of respondent's said products.

PAR. 3. Respondent, in the sale and distribution of its Sealpax products, has adopted and maintained, and still maintains, a method, or plan, of procuring and enforcing the maintenance of resale prices established by it on said commodities manufactured by it, when resold in interstate commerce, in the furtherance and execution of which method or plan it requests and enlists the active participation of jobbers and wholesalers selling said product so manufactured by it.

PAR. 4. Amongst the said jobbers and wholesalers handling Sealpax products, a divergence in the overhead costs, or operating expenses, of doing business exists; said divergence is substantial and ranges from 12½ to 18.7 per cent. The purpose and intent of the respondent company in its said merchandising policy is:

(*a*) To provide for all of its said jobbers and wholesalers a profit which was and is the full profit arbitrarily fixed and established by respondent according to its system of uniform resale prices, the maintenance of which respondent requires and enforces upon all its said jobbers and wholesalers;

(*b*) To provide for all its said jobbers and wholesalers protection in securing such full profit on the Sealpax products manufactured by respondent;

(*c*) To obtain the active support and cooperation of all its jobbers and wholesalers in preventing and eliminating all sales of said products at lower prices than its fixed, uniform resale prices.

PAR. 5. In carrying out said policy and to secure such coopera. tion, the respondent—

(*a*) Has issued and still issues circulars, price lists, and letters to the wholesale trade generally, showing suggested uniform resale

prices, both wholesale and retail, to be charged for its Sealpax products, at which said wholesale prices, respondent expects its said jobbers and wholesalers to sell its said Sealpax products to retailers, and which said retail prices respondent expects its said wholesalers to communicate to the said retailers purchasing said Sealpax products;

(*b*) Has requested and still requests and insists that the aforesaid jobbers and wholesalers resell said products only at the suggested resale prices;

(*c*) Has made and now makes it generally known to such jobbers and wholesalers that if they or any of them fail to sell said products at the resale prices suggested by the respondent, as aforesaid, respondent will refuse to sell further Sealpax products to them or any of them.

PAR. 6. Respondent in carrying out said policy—

(*a*) Has placed on all its bills and invoices for said products the following legend:

The sale of goods mentioned in this order is made in consideration of the purchaser named in this order maintaining the suggested jobbing prices on Sealpax products as established from time to time.

(Signed) SEALPAX COMPANY.

(*b*) Has notified certain of its said jobbers and wholesalers by its salesmen in the course of business dealings that the said resale prices fixed by respondent upon its Sealpax products "must be maintained";

(*c*) Has guaranteed all said jobbers and wholesalers who maintain respondent's resale prices against any decline in the prices of the said products and notified them that any deviation from the "suggested" prices would work a forfeiture of this privilege;

(*d*) Has within the time aforementioned eliminated and does eliminate said jobbers and wholesalers selling Sealpax underwear who have been reported by competitors as not maintaining said prices in those communities where competition is keen and respondent's resale prices are not strictly maintained;

(*e*) Has within the time aforementioned kept and does keep a card list of its said jobbers and wholesalers selling said Sealpax underwear and has placed after the names of those said jobbers and wholesalers who do not maintain its prices for said underwear the words or initial letters "Do not sell," "Do not solicit" and "D. N. S.," respectively, the abbreviation standing for "Do not sell" or "Do not solicit" said phrases and abbreviations for same indicating that the said jobber or wholesaler was not in the future

to be solicited to purchase respondent's products; in fact, to be refused any further supply of Sealpax goods on account of failure to maintain respondent's prices;

(*f*) Has within the time aforementioned reinstated and does reinstate said jobbers and wholesalers previously cut off for failure to resell said products at prices suggested by respondent upon the basis of declarations, assurances, statements, promises and similar expressions, as the case may be, by said jobbers and wholesalers, respectively, which satisfy the respondent that such jobbers and wholesalers will thereafter resell said products at the prices suggested by respondent;

(*g*) Has within the time aforementioned added and does add to its list, new jobbers and wholesalers reported by its representatives as declaring that they intend to, or will resell at the prices suggested.

PAR. 7. Pursuant to said plan of cooperation between respondent and its dealer customers, the said jobbers and wholesalers handling respondent's Sealpax underwear have repeatedly reported to respondent instances of price cutting in said products in their respective localities and in many cases have reported specifically the name of such price cutter and in some instances have requested respondent to discontinue selling to them, and respondent has approved and furthered such action on the part of said jobbers and wholesalers handling its Sealpax underwear by repeatedly expressing its appreciation of such notification in letters of reply to such jobbers and wholesalers, and has aided and abetted its said jobbers and wholesalers in such reporting of price cutters by repeatedly requesting its said jobbers and wholesalers to supply the name of such price cutters, and, upon receipt of such report, respondent has had its salesmen to investigate, and when such salesmen have confirmed reported price cutting, has refused further to supply the price cutter with its said products.

PAR. 8. The effect of such cooperative plan of price maintenance enforced as aforesaid, has been and is:

(*a*) To secure for the respondent, Oppenheim, Oberndorf & Company, Inc., in the sale of Sealpax underwear manufactured by it, the trade of jobbers and wholesalers, including especially the relatively high cost and more inefficient, and to enlist the active support and cooperation of said jobbers and wholesalers in enlarging the sale of the said price-maintained products manufactured by respondent to the prejudice of competing manufacturers who do not fix, require or enforce the maintenance of resale prices upon their similar products;

(*b*) To eliminate competition in prices among jobbers and wholesalers, respectively, handling Sealpax underwear manufactured by the respondent, thus preventing jobbers, wholesalers and especially the lower cost and more efficient establishments, from selling respondent's said products at prices which they deem adequate, and which are warranted by their cost and selling efficiency as heretofore set out, whereby such portions of the public as require or prefer the said products of the respondent are compelled to pay enhanced prices therefor.

CONCLUSION.

The methods of competition set forth in the foregoing findings are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of respondent, the testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and the Commission having duly made its findings as to the facts with its conclusion that respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Oppenheim, Oberndorf & Company, Inc., doing business under the trade name and style of Sealpax Company, its officers, agents, servants and employees, do cease and desist from directly or indirectly carrying into effect by cooperative methods a system of resale prices in which respondent, its customers and agents undertake to prevent others from obtaining the Sealpax products of respondent at less than the prices designated by it:

(1) The practice of reporting the names of jobbers and wholesalers who do not observe such resale prices.

(2) Causing jobbers and wholesalers to be enrolled upon lists of undesirable purchasers who are not to be supplied with the Sealpax products of the company unless and until they have given satisfactory assurance of their purpose to maintain such designated prices in the future.

(3) By employing its salemen or agents to assist in any plan of reporting jobbers and wholesalers who do not observe such resale prices for said products.

(4) By utilizing any other equivalent cooperative means of accomplishing the maintenance of prices fixed by respondent for said products.

It is further ordered, That respondent within sixty (60) days after service upon it of this order file with the Commission a report, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set out.

FEDERAL TRADE COMMISSION

v.

PHILIP MOSKOWITZ, TRADING UNDER THE NAME AND STYLE OF ROCHESTER CLOTHING COMPANY.

Docket No. 826—April 23, 1925.

MODIFIED ORDER TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes;"

Now, therefore, it is ordered, That the respondent, Philip Moskowitz, individually and trading under the name of Rochester Clothing Company, his partners, agents, servants, representatives and employees, do cease and desist from:

(1) Using on tags or labels on clothing manufactured in New York City, New York, or any place other than Rochester, New York, and sold and shipped, or sold for shipment, in interstate commerce, the words "Rochester Clothing Company," or the word "Rochester" alone or in combination with other word or words, unless following such words or brand, and in type or lettering equally conspicuous with them appear the words, "Made in New York City," or "Manufactured in New York City," if the clothing is, in fact, made in New York City, N. Y., or by the words "made in" or "manufactured in," or words of equivalent meaning, followed by the name of the city or place and State where such clothing is made.

(2) Displaying or using the words or brand "Rochester Clothing Company," or "Rochester" alone or in combination with other words, on stationary and billheads used in the business of making, selling and shipping, or selling for shipment, clothing in interstate commerce, or in advertising clothing made elsewhere than in Rochester, New York, in newspapers, trade journals or elsewhere in interstate commerce, unless following such words or brand, and in type or lettering equally conspicuous with them appear the words "Made in New York City" or "Manufactured in New York City," if the cloth-

[1] The complaint, findings, and original order are reported in 6 F. T. C. 259.

ing in fact is made in New York City; or by the words "made in" of "manufactured in" or words of equivalent meaning, followed by the name of the city, town or place and State where such clothing is made or manufactured.

It is further ordered, That respondent Philip Moskowitz, trading under the name and style of Rochester Clothing Company, shall within sixty (60) days after the service upon him of a copy 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

GREENHALGH MILLS, J. BRAUMHALL, J. W. BIRD, W. C. BAYLIES, ROBERT AMORY, CHARLES CREHORE, AND B. F. MEFFERT, COPARTNERS, TRADING UNDER THE NAME AND STYLE OF AMORY, BROWNE & COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1005—May 7, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a cotton cloth resembling what is commonly known as pongee silk, and their sales agents, sold said fabric branded or labeled "De Luxe Pongee" with the capacity and tendency to mislead the trade and public in reference to its composition, and thereby to induce the purchase thereof:

Held, That the sale of goods branded or labeled as above set forth, constituted an unfair method of competition.

Mr. E. J. Hornibrook for the Commission.

Mr. Guy Cunningham of Herrick, Smith, Donald & Farley of Boston, Mass., for respondents.

COMPLAINT.

Acting in the public interest, and pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Greenhalgh Mills, a corporation, hereinafter referred to as the Manufacturing Respondent, and J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, copartners trading under the name and style of Amory, Browne & Company, hereinafter referred to as the Selling Respondents, have been and are using unfair methods of competition in commerce, in violation of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said manufacturing respondent, Greenhalgh Mills, is a corporation organized and existing under the laws of the State of Rhode Island, with its principal office and factories located at Pawtucket, in said State. It is now, and at all times hereinafter mentioned has been, engaged in the business of manufacturing cotton fabrics exclusively, and in the sale of said fabrics through its agents, said selling respondents, to manufacturers of men's shirts, pajamas

and other similar garments, located throughout the several States of the United States, and causes said fabrics, when so sold, to be transported from its mills located in Pawtucket, Rhode Island, to, into and through other States of the United States and the District of Columbia, to the purchasers thereof. In the course and conduct of its business said respondent has been and now is in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of cotton and silk fabrics in interstate commerce.

PAR. 2. Said selling respondents, J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, are copartners doing business under the name and style of Amory, Browne & Company, located at No. 31 Thomas Street, New York City, State of New York, and are engaged in the business of selling on a commission basis cotton fabrics manufactured by a number of large cotton goods manufacturers, including the manufacturing respondent named herein. In the course and conduct of their said business said selling respondents brand and label the products which are placed in their hands for sale, and in the year 1920, with the knowledge, permission and consent of said manufacturing respondent and as agent therefor, said selling respondent began to brand and label, and have since continued to brand and label one of the cotton fabrics manufactured by said manufacturing respondent, as "De Luxe Pongee," and between the dates of July, 1920, and July, 1922, said selling respondents, with the knowledge and permission of said manufacturing respondent, have sold said cotton fabric labeled by them as aforesaid to American dealers and manufacturers under the name and style, "De Luxe Pongee," and have caused said fabrics, when so sold, to be transported from the mills of respondent manufacturer at Pawtucket, Rhode Island, to, into and through other States of the United States and the District of Columbia to the purchasers therof.

PAR. 3. The word "Pongee" placed by said selling respondents, with the knowledge and permission of the manufacturing respondent, on the labels and brands of cotton goods manufactured by said manufacturing respondent, and used in the sale of said products, as aforesaid, signifies to, and is understood by a substantial part of the trade and purchasing public as meaning a fabric composed entirely of silk and has the capacity and tendency to mislead the trade and purchasing public into the mistaken belief that such cotton fabric is a silk fabric, and to induce them to purchase said fabric in that belief.

PAR. 4. There are a number of manufacturers of silk fabrics who brand and label their products "Pongee" and sell such products to American manufacturers throughout the United States in competition with the respondents named herein.

PAR. 5. The above alleged acts and things done by the respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, Greenhalgh Mills, a corporation; J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, copartners, trading under the name and style of Amory, Browne & Company, charging said respondents with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondents having entered their apearance and filed their answer, and pursuant to order, proceedings to hear and receive testimony in the above entitled matter were begun in the State of New York, City of New York, on the 18th day of June, 1923, and concluded at the same place on the same day.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Greenhalgh Mills, is a corporation organized and existing under the laws of the State of Rhode Island, with its principal place of business in Pawtucket in said State. It was organized on the 31st day of July, in the year 1906, and has an authorized capital stock of $1,200,000. It manufactures cotton and silk fabric. Among its output is a cotton cloth of very superior weave, resembling what is commonly known as "Pongee Silk."

PAR. 2. Respondents J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, are copartners, doing business under the name and style of Amory, Browne & Company. Their places of business are New York City and Boston. They handle for respondent, Greenhalgh Mills, and sell the same on commission to manufacturers of garments and jobbers throughout

the different States of the Union, a part of the output of said described cotton fabric, and have sold and handled the same from the year 1920 to the present time. They style themselves "distributors" and compete against M. C. Borden Sons and about one hundred other distributors. They buy no goods. They receive, to sell on commission, from the respondent Greenhalgh Mills, this said cotton fabric in an undyed condition. They then have this fabric dyed at the expense of the respondent Greenhalgh Mills. With the knowledge and consent of respondent, Greenhalgh Mills, the owners of the goods, they cause said fabric to be branded or labeled with a label bearing the legend "De Luxe Pongee" which label was designed by resondent Greenhalgh Mills. In the form and with the label just described these goods are sold and shipped to jobbers and manufacturers in every State in the Union by the said Amory, Browne & Company, as agents for the said Greenhalgh Mills.

PAR. 3. The methods above described prevailed between these respondents from January, 1920, to January, 1923. In January, 1923, respondents abandoned the use of the word "Pongee" on the labels attached to said cotton fabrics. Since said date respondents have called and labeled said product "De Luxe Cotton."

PAR. 4. The word "Pongee" is a silk term and implies the product of the cocoon of the silk worm.

PAR. 5. The word "Pongee" or the words "De Luxe Pongee" used by the said respondent as a brand, stamp or label in the sale of cotton fabric in interstate commerce, signifies to and is understood by a substantial part of the trade and purchasing public as meaning a fabric composed entirely of silk and has the capacity and tendency to mislead the trade and purchasing public into the belief that such cotton fabric is a silk fabric, and to induce the trade and purchasing public to purchase said fabric in such belief.

PAR. 6. There are a number of manufacturers of silk fabric who have branded, stamped or labeled their products "Pongee" and have sold such fabric to garment manufacturers and jobbers throughout the United States in competition with the cotton fabric manufactured by respondent Greenhalgh Mills when such cotton fabric was branded, stamped or labeled as set forth in paragraph 2 hereof.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is a violation of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the above named respondents having entered their appearance by their attorney, B. Harwood, Esq., duly authorized and empowered to act in the premises, and having filed their answer, and the testimony herein having been taken and concluded at New York City on the 18th day of June, 1923, and the examiner for the Federal Trade Commission having made and filed his finding of fact herein on the 20th day of November, 1923, and the Federal Trade Commission having made and entered its report stating its findings as to the facts, and its conclusion, that the respondents have violated Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, That respondents Greenhalgh Mills, a corporation, J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, copartners, trading under the name and style of Amory, Browne & Company, its or their officers, agents, representatives, servants or employees, cease and desist from using as a brand, stamp or label, or otherwise using or applying the word Pongee on or in connection with any fabric manufactured by respondent, Greenhalgh Mills, sold or to be sold in interstate commerce, unless such fabric is the product of the cocoon of the silk worm;

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

FEDERAL TRADE COMMISSION
v.
PHILADELPHIA BLANKET COMPANY, INC.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1049—May 13, 1924.

SYLLABUS.

Where a corporation engaged in the sale of blankets, steamer rugs, and carriage and automobile robes to wholesale and retail dealers, displayed on its signs, stationery, order blanks, etc., and listed its business under the name of a concern, which had theretofore become well and favorably known, and the merchandise of which had been acquired by the president of said corporation's predecessor, but not its good will or the right to use its name; with the tendency to cause the trade and public to purchase commodities dealt in by it as and for those of said concern, and with intent so to do, and with a tendency to injuriously affect the business of competitors:

Held, That such wrongful appropriation and use of trade name, under the circumstances set forth, constituted an unfair method of competition.

Mr. Edward E. Reardon for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Philadelphia Blanket Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the City of Philadelphia, in said State, and with branch places of business in the Cities of New York, New York; Chicago, Illinois; and San Francisco, California. It is engaged in the business of selling blankets, horse blankets, carriage and steamer rugs and robes, and allied commodities to wholesale and retail dealers located at points in the various States of the United States. It causes said commodities when so sold to be transported from its said principal place of business, or one of said branch places of business, into and through States other than the State of origin

of said shipments, to said purchasers at their respective points of location in competition with other individuals, partnerships and corporations engaged in the manufacture and/or sale of aforesaid commodities in interstate commerce.

PAR. 2. For about twenty years prior to the year 1920, one William B. Riley and one Edgar E. Young, as partners, were engaged in the business of selling blankets, horse blankets, carriage and steamer rugs and robes and allied articles to wholesale and retail dealers throughout the United States. Said partnership had its principal place of business in the City of Philadelphia, in the State of Pennsylvania, and a branch office and place of business in the City and State of New York, and conducted its said business under the trade name and style of William B. Riley & Company. During aforesaid period said partnership dealt in and sold merchandise of uniformly good quality and acquired and enjoyed a reputation throughout the trade and amongst the public for honesty, fair dealing and integrity, by reason whereof said partnership acquired a large business and good will amongst the trade and public practically throughout the United States, and a great demand existed during said period among said dealers and among the general public for the merchandise offered and sold by said partnership. Because of the integrity and fair dealing of said partnership and the uniformly good quality of the products sold by it, many dealers and many of the public in the United States dealt in and purchased aforesaid commodities of said partnership in preference to the similar commodities of the competitors of said partnership.

PAR. 3. In the year 1918, said William B. Riley died, and the said Young continued to conduct the business of said partnership under its aforesaid trade name until the year 1920, in which year said Young retired from business and sold to respondent all the merchandise of said partnership on hand or under contract of purchase by said partnership, together with the right to use certain trade-marks belonging to said partnership, and used to designate certain blankets sold by it, but refused to sell or transfer and did not sell or transfer to respondent the right to use aforesaid trade name "William B. Riley & Company." Shortly after said transaction, said Young fully wound up the affairs of said partnership, and the same thereupon ceased to exist and do business. The fact that said partnership had so ceased to exist and do business was not generally known to the trade and the public.

PAR. 4. After the purchase of aforesaid merchandise and trade-marks of said partnership as set out in paragraph 3 hereof, respondent proceeded to sell and deal in said merchandise and similar

merchandise under the said trade name "William B. Riley & Company," and in connection therewith placed said trade name upon certain of its letterheads, bills, circulars and other business forms and literature and upon signs displayed upon its several aforesaid places of business, and further attached to said merchandise and similar merchandise, certain labels, other than labels bearing the trade-marks assigned to respondent by said Young, as hereinbefore set out, which had been similarly so attached by said partnership during the existence of its business and which had been and were associated with the goods of said partnership in the mind of the trade and public. Aforesaid acts and practices of respondent tended to and did mislead and deceive the trade and public generally into the belief that said partnership was still in existence and doing business, that the purchasers of said commodities so sold by respondent were securing the merchandise of, and doing business with aforesaid partnership, and tended to and did cause the trade and public to purchase said commodities in that belief.

PAR. 5. Since adopting the practices set forth in paragraph 4 hereof, respondent has continuously since engaged and still engages in the same under the circumstances and with the results in said paragraph set out.

PAR. 6. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, The Philadelphia Blanket Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having filed its answer herein and having appeared by its treasurer, George F. Joly, Jr., hearings were had and evidence was thereupon introduced in support of the allegations in said complaint and on behalf of the respondent before Edward M. Averill, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing and the Commission having heard argument of counsel and duly considered

the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

The respondent, Philadelphia Blanket Company, Inc., is a corporation organized under the laws of the Commonwealth of Pennsylvania, in January, 1901, originally under the name of J. W. Ringrose Net Company with a capital stock of $10,000. After two changes in its corporate name it became known on or about April 29, 1922, as the Philadelphia Blanket Company, Inc., under which name it has continued to do business to the present time. Prior to April 29, 1922, there was another and distinct corporation known as the Philadelphia Blanket Company doing business in Philadelphia, Pennsylvania. This latter corporation was organized in 1908 under the laws of the Commonwealth of Pennsylvania. George F. Joly, Jr., was the president of this corporation on or about November 1, 1920. The latter corporation was merged in the respondent corporation on or about April 29, 1922.

The Philadelphia Blanket Company, Inc., the respondent took over the business of the company known as the Philadelphia Blanket Company above referred to which had a place of business in the City of Philadelphia, Pennsylvania, and a branch place of business in the City of New York, New York, and was represented by commission selling agents in the Cities of Chicago, Illinois, and San Francisco, California, and has conducted the blanket business from April 29, 1922, to the present time. Respondent's place of business in Philadelphia is at No. 219 North Third Street, and in New York City is at No. 52 Leonard Street.

The business of respondent is the selling of blankets, horse blankets, steamer rugs, carriage and automobile robes to wholesale and retail dealers located at points in the various States of the United States, and the respondent causes said commodities when sold by it to be transported from its said places of business into and through States other than the State of origin of the shipments to purchasers at their respective points of location in such other States.

Other individuals, partnerships and corporations are engaged in the manufacture and sale of the same or similar commodities and in the course of their business cause said commodities when sold by them to be transported in interstate commerce to the purchasers located in States other than the State of origin of the shipments and including the States into which respondent causes its commodities to be transported when sold by it as aforesaid.

Prior to 1917, for a period of about twenty years Edgar E. Young and William B. Riley were copartners, trading under the firm name and style of Wm. B. Riley & Co., with a principal place of business at No. 238 Chestnut Street, in the City of Philadelphia, Commonwealth of Pennsylvania, and a branch place of business at No. 50 Leonard Street, in the City of New York, State of New York. The business of the firm was the sale of blankets, steamer rugs, carriage and automobile robes in interstate commerce throughout the entire United States. Edgar E. Young and William B. Riley were the sole partners. William B. Riley died in March, 1917, and Edgar E. Young conducted the firm's business after that date as sole surviving partner and in the following month, April, 1917, Mr. Young bought the entire interests of the estate of his deceased partner in the firm.

Particularly in the purchase agreement with the executors was the provision that the right to use the name of Wm. B. Riley in the firm's name was included in the sale to Edgar E. Young.

By an agreement entered into between Edgar E. Young, sole proprietor of Wm. B. Riley & Co., and George F. Joly, Jr., dated November 23, 1920, stated therein to be effective November 1, 1920 (Res. Ex. No. 1),[1] Mr. Young sold all the stock of merchandise of Wm. B. Riley & Company, on hand or due on contract, to George F. Joly, Jr., at cost price to the said Wm. B. Riley & Co., or at present price quoted to them whichever was lower. It was also agreed that Wm. B. Riley & Co., would turn over to the purchaser any unfilled orders on their books and the firm's rights and interests in the trade-marks "Hercules" and "Bluestone." The purchaser, George, F. Joly, Jr., agreed to employ three of the employees of Wm. B. Riley & Co., at their then rate of compensation and to take over the premises occupied by Wm. B. Riley & Co., in Philadelphia and New York City and to assume the rent of the same to the termination of the existing leases. There were other trade-marks used in the business of Wm. B. Riley & Co., which were not transferred by the agreement of sale to George F. Joly, Jr. One of these was the registered trade-mark "R" with crest (Com's Ex. No. 5),[1] and another was the unregistered trade-mark "R" (Com's Ex. No. 6).[1]

The good will of the firm was not included in the sale. At the time of the sale of the merchandise by Wm. B. Riley & Co., to George F. Joly, Jr., Edgar E. Young, the sole proprietor of Wm. B. Riley & Co., knew that George F. Joly, Jr., was connected with the Philadelphia Blanket Company, the corporation later merged in the respondent corporation, and the agreement of sale between Wm.

[1] Not published.

B. Riley & Co. and George F. Joly, Jr. (Res. Ex. No. 1),[1] was purposely not made with the corporation but with George F. Joly, Jr., because Edgar E. Young would not sell to the corporation.

In November, 1920, when the merchandise was sold the good will of the firm of Wm. B. Riley & Co., considered as an asset alone without merchandise stock, was worth from $50,000 to $100,000. During the time the firm was in business it traveled salesmen in every State of the United States and spent a great deal of money in advertising. The firm was known to practically everyone in its line of business and to the consuming public through its years of advertising and merchandising. The reputation of Wm. B. Riley & Co., as to financial strength, integrity, ability and fidelity in filling orders of customers was considered and described in the trade as "A-1." It was of the highest type of house both in buying and selling and was the second or third largest concern in the blanket business in the United States. During the years, 1917, 1918, 1919, and for the ten months up to November, 1920, the amount of gross sales of Wm. B. Riley & Co., were at the annual rate of from approximately $500,000 to over $1,500,000, and the net profits for the same period were at the annual rate of from approximately about $100,000 to over $280,000. It is estimated that it would cost from $15,000 to $20,000 per year for advertising in order to gain the reputation and good will equal to that enjoyed by the firm of Wm. B. Riley & Co.

The sale of the merchandise at the cost price to Wm. B. Riley & Co., or at present price quoted to them whichever was lower, did not include the good will of the firm or the use in trade of the name Wm. B. Riley & Co., around which the good will was developed and on which it was based.

The unused stock of letterheads and order blanks of the firm were sold on the understanding that they could be used only after the name Wm. B. Riley & Co. was stamped across with a heavy line and the name of the Philadelphia Blanket Company was stamped above.

The respondent never had the right to trade under the name of Wm. B. Riley & Co. On December 24, 1921, Edgar E. Young, sole proprietor, as sole surviving partner and as purchaser of the interests of his former partner in the firm of Wm. B. Riley & Co., transferred and assigned to Alice S. Young all his right, title and interest in the concern of Wm. B. Riley & Co.

The Philadelphia Blanket Company (the corporation later succeeded by respondent) immediately upon the sale of the merchandise to George F. Joly, Jr., went into the occupancy of the former premises of Wm. B. Riley & Co., at No. 238 Chestnut Street, Phila-

[1] Not published.

delphia and at No. 50 Leonard Street, New York City, New York, and occupied those premises until the expiration of the leases to Wm. B. Riley & Co. The Philadelphia Blanket Company removed from the premises No. 50 Leonard Street, New York City on February 1, 1921, and a short time later from the premises at No. 238 Chestnut Street, Philadelphia, to another location in Philadelphia, and conducted the blanket business until the merger between that company and the respondent on April 29, 1922.

When the Philadelphia Blanket Company took possession of the former place of business of Wm. B. Riley & Co., at No. 50 Leonard Street, New York City, on November 1, 1920, the old sign of the firm was permitted to remain at the entrance there until, at the expiration of the lease, on or about the first of the following February, The Philadelphia Blanket Company removed its business to No. 52 Leonard Street, New York City.

After the Philadelphia Blanket Company removed from the former place of business of Wm. B. Riley & Co., to No. 52 Leonard Street, on February 1, 1921, it caused a new sign to be placed there (Com's Ex. No. 18)[1] reading:

"PHILADELPHIA BLANKET CO.

STEAMER RUGS

WM. B. RILEY & CO."

On January 27, 1921, a letter was sent to the New York Telephone Company on the letterhead of the Philadelphia Blanket Company requesting the removal of the phone from No. 50 to No. 52 Leonard Street, New York City. This letter (Com's. Ex. No. 19, transcript of testimony p. 98)[1] is signed "William B. Riley & Company." "Mc."

The name of Wm. B. Riley & Co., was signed to the said letter without authority or right and in the interest of respondent and by this unauthorized means the firm name of Wm. B. Riley & Co. was carried over to the new premises and was retained and used by the Philadelphia Blanket Co., Inc., the respondent, in the telephone directory of New York City and so used by respondent in trade.

On or about March 27, 1922, the Philadelphia Blanket Company, Inc., the respondent, by its treasurer, George F. Joly (who was also the president of the Philadelphia Blanket Company), made application to the New York Telephone Company to transfer the original contract with Wm. B. Riley & Co., to respondent. On this application the request was made to the telephone company to continue the

[1] Not published.

listing of Wm. B. Riley & Co., in the New York Telephone Directory under the same telephone number as respondent and at respondent's address. (Com's. Ex. 22, transcript of testimony pp. 98, 99.)[1]

On or after April 29, 1922, the respondent caused its letterheads and order blanks to be printed reading as follows:

"THE PHILADELPHIA BLANKET CO. INC.,

WM. B. RILEY & Co. PHILADELPHIA BLANKET Co. J. W. RINGROSE Co."

(Com's. Exs. Nos. 2 and 3.)[1]

The use of the said sign at No. 52 Leonard Street, New York City, and the said letterheads and order blanks by respondent in its business was continued until persons in the blanket trade advised Alice S. Young of the same during August, 1922, who protested against the use of the name Wm. B. Riley & Co., by respondent, and the use by it of the letterheads, order blanks and sign with the said name thereon.

After this protest the respondent tried to obtain the right to use the said name in connection with its business from Alice S. Young who would not sell the same, and thereafter on or about November 29, 1922, the respondent abandoned the use of the name Wm. B. Riley & Co., on all its stationery and removed the sign objected to at No. 52 Leonard Street but replaced it with another sign which it now maintains there, reading as follows:

"PHILADELPHIA BLANKET Co. INC.

STEAMER RUGS

FORMER LINES OF

WM B. RILEY & Co."

the words "Former Lines of" being in smaller letters.

In Philadelphia, where Edward E. Young lived and where Alice S. Young, who owned all the interest in and the right to the use of the firm name Wm. B. Riley & Co., continued to live after the death of Edward E. Young, the respondent has not displayed at its principal place of business any sign with the name Wm. B. Riley & Co., thereon. Nor has respondent caused the name of Wm. B. Riley & Co., to be listed in the telephone directory in the City of Philadelphia. The respondent's predecessor, Philadelphia Blanket Company did not display any sign with the name of Wm. B. Riley & Co.,

[1] Not published.

thereon at its principal place of business in Philadelphia after the date of the expiration of the Riley & Co.'s lease at No. 238 Chestnut Street, Philadelphia, nor cause the said firm name to be listed in the Philadelphia telephone directory.

At the time of the sale of the merchandise by Wm. B. Riley & Co. to George F. Joly, Jr. November 1, 1920, the said firm sent a form letter to their customers announcing the transfer of certain lines of their goods and bespoke a continuance of the same pleasant relations with the Philadelphia Blanket Co., that the firm's customers had extended to Wm. B. Riley & Co. in the past.

The use by respondent of the firm name, "Wm. B. Riley & Co." on its sign at its place of business preceded by the qualifying words, "former lines of" was therefore in accordance with the fact and with the letter of Wm. B. Riley & Co. to their customers.

The use by respondent of the said firm name on a sign erected by respondent at respondent's place of business, and also carrying respondent's name equally conspicuous thereon, without any qualifying words, as aforesaid, was without right and falsely represented to the public that the said firm, Wm. B. Riley & Co., was conducting business in the premises referred to, or that it was owned or controlled by or connected in actual and active business in some manner with the respondent, and was prejudicial to the public and competitors of respondent.

The use of the firm name Wm. B. Riley & Co. on its letterheads or other stationery, as in Commission's Exhibits Nos. 2 and 3, and the listing of the said firm name in the New York City telephone directory under the same telephone number and at the same address as respondent, at 52 Leonard Street, New York City, was unauthorized and without right and constituted trading under the name of Wm. B. Riley & Co. and by means thereof respondent falsely represented that Wm. B. Riley & Co. was actually conducting business in the premises referred to, or that it was owned or controlled by or connected in actual and active business in some manner with the respondent, and was prejudicial to the public and competitors of respondent.

The right to trade in the blanket business in Philadelphia and New York City under the firm name Wm. B. Riley & Co. by using the name on letterheads or other stationery, on a sign at a place of business and by carrying a listing of the firm name and address in a telephone directory was a valuable right because of the confidence and good will created by the firm by means of large capital employed and years of costly advertising resulting in a large volume of busi-

ness transacted annually throughout the United States and by reason of the consequent effect of the firm's name upon the public in connection with the sale of such merchandise as the firm dealt in.

The sole purpose of trading under the firm name was on account of its effect on the members of the public and the advantage it gave over competitors of respondent. The importance and extent of the effect of the use of the name Wm. B. Riley & Co. on the public and the advantage it gave over competitors, is amply shown by the evidence of the repeated unsuccessful attempts of respondent through its treasurer to obtain the right to use the firm name and the unauthorized use of the name by respondent, as above set forth, when the right to its use could not be obtained.

The aforesaid use of the name Wm. B. Riley & Co. by respondent on letterheads, order blanks, and other stationery, and on a sign without being preceded by the words "former lines of," and in the listing of the name and address in the telephone directory in New York City in connection with respondent's place of business was with the purpose and intent of deceiving and misleading the trade and the public into the belief that the firm of Wm. B. Riley & Co. was actually doing business at respondent's address; that the purchasers of commodities sold by respondent were securing the merchandise of and doing business with the said partnership and tended to cause the trade and public to purchase said commodities in that belief and to injuriously affect the business of competitors of respondent engaged in the sale of such commodities in interstate commerce.

CONCLUSION.

The practices of said respondent, as set forth in the foregoing findings as to the facts, are unfair methods of competition and constitute a violation of an Act of Congress approved September 26, 1914, entitled, "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The above-entitled proceeding coming on for final determination by the Federal Trade Commission upon the complaint of the Commission, answer of respondent and testimony of the parties and the Commission having considered the same and argument having been heard and the Commission, being fully advised in the premises, having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal

Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, Philadelphia Blanket Co., Inc., its agents, representatives, and employees, do—

Cease and desist from traidng under the name Wm. B. Riley & Co., by causing the said name to be or to remain listed in any telephone directory, either in connection with the same telephone number and address as the Philadelphia Blanket Co., Inc., or in connection with any other telephone number or address; from using the name Wm. B. Riley & Co., on letterheads or other stationery in any manner representing that it is conducting business under said firm name or in connection therewith; from using the name Wm. B. Riley & Co., in any manner on any sign used by respondent in its business except in connection with the words "former lines of" or words of equivalent meaning placed conspicuously immediately preceding the said firm name.

It is further ordered, That the respondent Philadelphia Blanket Co., Inc., shall within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Dissent by Commissioner Van Fleet.

I dissent from the order in this case.

On March 17, 1924, the complaint in this case by vote of the Commission was dismissed "for the reason that the record shows that this matter should have been determined between the parties by private action in court," and the secretary was directed to serve the order of dismissal. On March 28, 1924, the Commission by a majority vote reconsidered the former vote and voted the present order to cease and desist. I am dissenting because I adhere to the opinion as expressed in the first order of the Commission that "the record shows that this matter should have been determined between the parties by private action in court." The record disclosed that William B. Riley & Company was a partnership composed of William B. Riley and Edgar E. Young, that Riley died and Young continued the business for a time under the firm name. That Young later sold to respondent all the merchandise of said partnership on hand together with the right to use certain trade marks belonging to said partnership.

The agreement was evidenced by a written instrument executed by the parties. Edgar E. Young died and his widow and the executors of his estate complained of the use by respondent of the name

William B. Riley, evidently deeming that the name was of some commercial value. Whether under the written agreement the respondent had the right to use this name is a question of law to be determined by the court. It is a purely private controversy between them. The Commission is not created to collect debts or establish purely personal and private rights between parties.

The trial examiner in this case found that—

The form of letterhead adopted by the respondent on or about April 29, 1922, and continued in use by the respondent until on or about November 29, 1922, is calculated to, and might, cause some one seeing said stationery to believe that the respondent, Philadelphia Blanket Company, Inc., was a successor to Wm. B. Riley & Company, but such was the fact and there is no evidence of any of the trade, or of the consuming public, in any way being misled or deceived. The notice sent out by Edgar E. Young to the trade, advising them that Wm. B. Riley & Company had ceased business, and of the transference of the business of Wm. B. Riley & Company to the Philadelphia Blanket Company would negative any presumption which might arise as to any general tendency or capacity of such stationery to mislead or deceive the trade, and there is absolutely no evidence that the ultimate user of blankets or robes, the consumer, ever had any opportunity to see such stationery.

The respondent ceased the use of the words, "Wm. B. Riley & Co." upon its stationery on or about November 29, 1922, as set out in Paragraph IV, and has not since that time used same. The respondent has used, since November 29, 1922, and continues to use upon the sign at the New York Office, under the words "Steamer Rugs," the words, "Former Lines of Wm. B. Riley & Co." which is a statement of a fact.

The evidence reveals no acts or things done by respondent which are to the prejudice of the public or to the competitors of respondent, and reveals only a private dispute between the widow and executors of Edgar E. Young and the respondent.

The respondent contends that among the rights conveyed was the right to the good will of Wm. B. Riley & Company; the widow and executor of Edgar E. Young contend that the contract does not carry the good will. This is strictly a question of involving the construction of a contract, which is for the courts to determine. There is no substantial public interest involved.

The law authorizes the Commission to issue orders only when it shall be to the public interest. There being no public interest and this being in my opinion a purely private controversy, I dissent from the order.

FEDERAL TRADE COMMISSION

v.

WISCONSIN WHOLESALE GROCERS' ASSOCIATION, ITS OFFICERS, DIRECTORS AND MEMBERS.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 804—May 23, 1924.

SYLLABUS.

Where an association which included in its membership a substantial majority of the wholesale grocers doing business in the territory concerned, and the officers and members thereof; in pursuance of a concerted effort to induce manufacturers from whom they purchased, to guarantee against price decline the goods sold by them to said wholesalers, and acting through the medium of letters to manufacturers concerned, and through their association secretary and the association bulletin, in which there were set forth communications, advice, and suggestions from the members and from said secretary.

(a) Urged the members, in response to the request of one of their number, to write to a manufacturer in anticipation of a decline in the price of his products, requesting such a guarantee, and, following such decline, to protest the lack of such a guarantee, and demand a rebate on his stocks in their hands;

(b) Advised said manufacturer that the sentiment in favor of such a guarantee was general among jobbers and that should he fail to do something for them he would lack the cooperation in the future that he had had in the past;

(c) Advocated and encouraged persistence among the members in bringing and maintaining pressure upon the manufacturers to achieve the object above set forth;

(d) Advised a manufacturer who refused to concede such a guarantee, that his reasons for so doing would be placed before the membership, and called his attention to the action of other manufacturers who had granted such concession and to the fact that a competitive situation was involved, as warranting the suggestion that he seriously consider the advisability of granting a rebate on stocks of his products in the hands of the jobber;

(e) Requested of the membership names of those manufacturers who did, and of those who did not, grant such a guarantee and circulated among the membership lists of the former, which it had thus secured and from other trade sources with which it cooperated;

(f) Circulated the names of several manufacturers who did not make such a guarantee, together with derogatory comment and expressions from members to the effect that they were disposed to push the products of manufacturers who gave such a guarantee and to withhold cooperation in the sale of competing products from those who did not;

(g) Suggested that in the case of price concessions on commodities handled by the members and not covered by a guarantee, said commodities be disposed of on the basis of original cost to the members rather than replacement cost, and circulated a price so based, resulting in a jobber's price for the article concerned higher than that contemplated by the manufacturer; and

(h) Set forth the need of the guarantee sought in order to protect the members against price competition with each other;

With the capacity and tendency to cause a refusal or curtailment of purchases from manufacturers who did not grant such a guarantee and to prejudice and injure the business thereof, and to benefit correspondingly that of those who did, and with a dangerous tendency to hinder competition between the two classes of manufacturers and to lessen substantially price competition among the members;

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Walter B. Wooden and *Mr. E. R. Blake* for the Commission.
Mr. Edwin J. Gross of Milwaukee, Wisconsin, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Wisconsin Wholesale Grocers' Association, its officers, directors and members, including the various individuals, partnerships and corporations named in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wisconsin Wholesale Grocers' Association is a voluntary unincorporated trade association composed of wholesale grocers and jobbers of grocery and food products having their places of business in the States of Wisconsin and Minnesota. The object of said association is to promote and protect the common interests of said members. Respondents, Willibald Hoffman, James D. Godfrey, Mitchell Joannes, Francis E. Dewey, Francis J. Rickert, and their respective successors, were at all times hereinafter mentioned and still are officers of said association administering its affairs. Respondents Willibald Hoffman, James D. Godfrey, Mitchell Joannes, C. F. Mittelstadt, F. M. Fox, A. C. Blackburn and F. C. Comstock, and their successors, were at all times hereinafter mentioned and still are directors of said Association together constituting its board of directors; Chesbrough-Moss Company, Chippewa

Valley Mercantile Company, Eau Clair Grocer Company, The H. T. Lange Company, The Zinke Company, Joannes Brothers Company, Greiling-Innes Company, Kenosha Wholesale Grocer Company, J. J. Hogan, Incorporated, The Sisson-Seilestad-Hougen Company, Gould, Wells & Blackburn Company, Kluster & Company, Simon Brothers Company, Plumb & Nelson Company, J. F. Rappel Company, Marshfield Grocer Company, H. F. Mueller Company, Henrickser & Jacobson Company, Lange Grocer Company, The Copps Company, A. Kickbusch Grocery Company, Wilson Mercantile Company, Latsch & Son, Dahlman & Inbusch Grocery Company, Edward Dewey Company, Louis Dobbratz Company, George Geiger & Company, E. R. Godfrey & Sons Company, John Hoffman & Sons Company, Kurth Brothers Company, Mueller Wild Company, E. R. Pahl & Company, D. Reik & Sons Company, George L. Robinson & Company, Roundy, Peckham & Dexter Company, J. & M. Steiner, were at all times hereinafter mentioned and now are corporations, organized and existing under the laws of the State of Wisconsin and members of said association. From time to time the membership of said association is increased by the addition of new members so that all the members of said association at any given point of time cannot be specifically named as respondents herein without manifest inconvenience and delay, wherefore, the officers hereinbefore named respondents as such officers, are also made respondents as representing all members of said association including those not herein specifically named. The various members of said association purchase groceries and food products in several States of the United States other than the States in which are located respectively their several places of business, and cause said commodities to be transported from the States wherein the same are purchased to their respective places of business, and thereafter sell said commodities and cause same to be transported from their respective places of business to purchasers at points in other States of the United States, and there has been continuously for a period of more than two years last past and still is a constant current of trade and commerce in the products dealt in by the various members of respondent association between various States of the United States. In the course and conduct of their said businesses, respondent members of said association are in competition with each other and with other individuals, partnerships and corporations engaged in the wholesaling of similar commodities, and with the trade generally.

PAR. 2. In the year 1920 respondent association acting on behalf of its said members and in cooperation with them, adopted and has since carried out a policy and plan of coercing, and attempting

to coerce, manufacturers from whom the members of said association purchase the commodities in which they deal, into guaranteeing and assuring said members that in the event of a reduction in the prices charged said members by said manufacturers for their products, each such member holding in stock at the time of such reduction any of said commodities purchased prior to the time of said reduction, will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by the member in each instance for said products actually on hand and unsold and said reduced prices thereof. In the carrying out of said plan respondent association and its officers, directors and members cooperating together, have, since the adoption of said plan, continuously done and still do the following acts and things:

(a) The members respectively report to the association the names of all manufacturers who so guarantee against declines in the sale of their products to members, and the names of other manufacturers who so guarantee generally which come to the notice of the members;

(b) The association compiles a list of such guaranteeing manufacturers whose names have been secured by it as set out in specification (a) and by other means and forwards a copy of said list to each member of the association for the information and use of the members in making purchases of the commodities in which they deal;

(c) The association exchanges said list with other similar associations for their similiar lists and forwards the lists received from such other associations to the members of respondent association for similar information and use;

(d) The association by means of letters, personal interviews and in other ways urges, and seeks by intimidation, to coerce various manufacturers who do not so guarantee against decline, into adopting said practice and notifies the members of its action in that behalf, urging the members to cooperate with the association in that regard by individually bringing similar pressure to bear upon said manufacturers;

(e) Said members upon receiving the information and suggestions set out in the preceding specification bring similar pressure to bear upon said manufacturers to cause them to adopt said practice;

(f) The success or failure of the coercive efforts set out in specifications (d) and (c) is notified by the association of its members and vice versa;

(g) The names of the manufacturers who adopt said practice either voluntarily, or by reason of the pressure brought to bear upon

them, as above set out, are added to the aforesaid list of names of guaranteeing manufacturers, and copies of the list thus revised are sent by the association to the members from time to time, or the names of such additional guaranteeing manufacturers are notified by the association to the members to be added to said list;

(h) In making current purchases of the products in which they deal the members use the lists and information received and acquired through the foregoing means and where ever possible make said purchases from the manufacturers so guaranteeing in preference to manufacturers who do not, or who refuse, to so guarantee.

PAR. 3. The acts and things done by respondent association, its officers, directors and members cooperating together, as above set out, tended and still tend to restrict, diminish and obstruct the sales and business of manufacturers of food products who do not guarantee against decline in prices as above set out, to the advantage of competing manufacturers of similar products who do so guarantee, and whose names appear in aforesaid lists and unduly to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 4. The above alleged acts and things done by respondents and by each of them are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents herein charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance by their attorney, Edward J. Gross, and respondents having duly filed their answers admitting certain allegations of said complaint and denying others and setting up certain new matter in defense, and hearing having been held before an examiner of the Commission theretofore duly appointed and the Commission having offered evidence in support of the said charges of the complaint and said respondents having offered evidence in their defense, which evidence was recorded,

duly certified, and duly transmitted to the Commission, and the Commission having again carefully examined and fully considered the testimony and documentary evidence offered and received, as heretofore set out, hereby makes this its modified findings as to the facts and conclusion:

MODIFIED FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Wisconsin Wholesale Grocers' Association, is now and for more than twenty-five years last past has been a voluntary unincorporated association, composed of wholesale grocers and jobbers of groceries and food products, residing in the States of Wisconsin and Minnesota; that the association was originally formed by wholesale grocers who resided in the State of Wisconsin, that the membership was later extended to take in wholesale grocers, residents of the State of Minnesota who were located in towns adjacent to the State line between Minnesota and Wisconsin; that the principal office of said respondent association is in Milwaukee, Wisconsin, where the secretary resides; that the objects for which the association was formed are to promote and protect the common interests of the members and to advance the welfare of the wholesale grocery business in this territory; that the personnel of said association membership is subject to more or less frequent change, but at the time this proceeding was instituted included some thirty-six wholesale grocer concerns; that the membership of the respondent association comprises 75 per cent of the wholesale grocers in the State of Wisconsin, and the respondent members of the respondent association do approximately 75 per cent of the wholesale grocery business in the State of Wisconsin.

PAR. 2. That the respondent members of said respondent association buy and sell and deal in groceries, food products and kindred commodities; that they purchase said groceries, food products and kindred commodities from manufacturers and dealers located in various States of the United States, and cause the same to be transported from said various States to the several warehouses and places of business of these respondents located in the States of Wisconsin and Minnesota; that some of said respondent members of said respondent association, after purchasing said groceries, food products and kindred commodities, sell the same to various purchasers located in various States of the United States, other than the State in which the seller is located, more particularly in Wisconsin and the States adjacent to the States of Wisconsin and Minnesota; that they cause said goods so sold to various purchasers to be transported

from their warehouses and places of business located in the States of Wisconsin and Minnesota, as aforesaid, to the various purchasers so located in the various States of the United States other than the State in which the seller is located, and that in the purchase, sale, and transportation of said groceries, food products, and kindred commodities as heretofore set out, said respondents are in active and direct competition with each other and with other persons, partnerships, firms, and corporations similarly engaged in commerce.

PAR. 3. That the respondent, secretary of the respondent association, has held the office of secretary for more than twenty-five years; that the by-laws and rules of practice of said respondent association provide for various duties and rules of action of said secretary and the other officers of said respondent association; that the rules of practice of said respondent association have not been closely followed for the past several years; that the said secretary, by reason of his having held the office for the past twenty-five years, is guided in his action largely by his own initiative, supplemented by close personal contact with officers and members of respondent association, particularly those located at Milwaukee; that his actions in all matters and his conduct of the office of secretary of said association have been approved and upheld by the officers and directors of said respondent association; that the said secretary publishes at frequent but irregular intervals a mimeographed bulletin; that in the said bulletin are published letters from members and other sources, articles and news items, which the secretary deems of interest and value to the members of said respondent association, and said bulletin is used as a medium to convey the ideas of various members to each other concerning any matter that they feel would be of interest and value to the membership of the respondent association; that the secretary sometimes includes information, comments and suggestions of his own in said bulletins, emphasizing and supplementing the ideas presented in the letters of members; that said mimeographed bulletin when so published is mailed to all members of the association; that said secretary of said respondent association also keeps a mailing list of certain persons and of secretaries of like associations located in various States; that when said bulletin is issued a copy of the same is mailed to the various people named on said mailing list; that said secretary, when he publishes in the said bulletin a letter from any member of said respondent association, never publishes the signature, and the writer of any such letter is never disclosed.

PAR. 4. That the period covered by the last few months of the year 1920 and the first half of 1921 was a period of marked decline in

the price of groceries, food, products, and kindred commodities dealt in by the respondent members of the respondent association; that some manufacturers from whom respondent members were purchasing in interstate commerce at that time guaranteed their products against their own decline in price, and that competing manufacturers from whom respondent members were also purchasing in interstate commerce did not so guarantee; that such a guarantee by manufacturers means that, in the event the manufacturer reduces his own selling price to the jobber, he will credit or rebate the jobber on the jobber's unsold stock by an amount equal to the difference between the price paid by the jobber and the reduced price later put into effect by the manufacturer.

PAR. 5. That on or about the first of November, 1920, one of the members of respondent association anticipated a decline in the price of a commodity known as "Jello", which was manufactured by the Genesee Pure Food Company, and said member wrote to said respondent secretary requesting him to ask the respondent members of the respondent association to write to the Genesee Pure Food Company asking the said Genesee Pure Food Company to protect the floor stock in the hands of the wholesale grocers against a decline in price; that said letter above referred to was published in the bulletin of November 15th and the said respondent secretary added a note in said bulletin requesting members to write to the said Genesee Pure Food Company asking them to protect the floor stock in the hands of the wholesale grocers against a decline in price in the event the said Genesee Pure Food Company reduced the price of the commodity "Jello." That said respondent secretary as secretary of the respondent association also wrote to the said Genesee Pure Food Company asking them to protect the floor stock in the hands of the members of said respondent association against decline in price in the event the said Genesee Pure Food Company reduced the price of the commodity "Jello." The said Genesee Pure Food Co., in answer to the said letter written by said respondent secretary, replied that they did not protect stock against decline; that on or about the 10th of December the Genesee Pure Food Company did reduce the price of their product "Jello"; that a majority of the wholesale grocers in Wisconsin and respondent members of respondent association had on their floors large stocks of the said product "Jello"; that when the price was reduced as aforesaid a member of said respondent association wrote to said respondent secretary concerning the said fact and requested the said secretary to urge the members of said respondent association through the said bulletin to write to said Genesee Pure Food Com-

pany letters of protest and to ask that the respondent members of said respondent association be rebated for the floor stock on hand; that said secretary published said request in said bulletin and also asked members to write to said Genesee Pure Food Company protesting against the decline in price unless the floor stock was protected. Said secretary as secretary of the respondent association also wrote said Genesee Pure Food Company a letter protesting against the decline in price; that in answer to this letter said secretary was again informed that the Genesee Pure Food Company did not protect floor stock in the hands of the wholesale grocer against decline in price. That one of the respondent members, on December 13, 1920, wrote the Genesee Pure Food Co., protesting the lack of a guarantee against decline on "Jello," and stating:

We believe the feeling among all jobbers is similar to ours and if you fail to do something for them you will lack the cooperation in the future that you have had in the past.

That a copy of said letter, including the portion quoted, was sent by said respondent member to the secretary of respondent association and bulletined by him for the information of all respondent members.

PAR. 6. That one of respondent members, in a letter to respondent association under date of December 10, 1920, which letter was reproduced by respondent secretary in a bulletin for the entire membership, stressed the importance of the jobbers urging the manufacturers to allow a guarantee against decline and stated:

The Cream-of-Wheat Co., came in line recently and others will do likewise if we keep everlastingly at it.

That in April, 1921, respondent secretary bulletined a member's letter containing the following:

The retail man of the Jello Company called on us and worked our trade not long ago, and he dropped a remark that led the writer to believe that had the wholesale grocers continued requesting his company for the rebate on floor stocks at the time of decline, that they would have received it, due to the fact that the Company was about ready to give into their request. As you know, this has all died down, and we are wondering if in your opinion it would be worth while to start another series of requests for rebate.

The salesman of course, did not say definitely that they would have given rebates, but judging from his remark, the pressure brought against the Genesee people was pretty strong just before the end of the campaign.

That in May, 1921, respondent secretary bulletined a member's letter complaining that the Wm. H. Luden Co., would not guarantee floor stocks on their recent price decline, and stating:

We think some effort should be put on this matter, the same as there was on Jello, and would be glad to have you mention it in your next bulletin. We are going back after them.

PAR. 7. That in November, 1920, respondent secretary wrote letters to five different soap manufacturers seeking to secure from each the removal of a time limit on their guarantee against decline. Said letters referred to the action of other soap manufacturers in making an unlimited guarantee as a reason why these five should grant the request. The Rub-No-More Co., refused to grant respondent secretary's request, whereupon respondent secretary wrote the Rub-No-More Co., that he would place its reasons for refusal before the members and further stated:

The fact however remains that the time limit guarantee is subject to competitive influences and I respectfully repeat that justified precedent established by several substantial soap manufacturers doing business in this territory, warrants our suggesting for your serious consideration the advisability of rebating the full amount of jobbers stock of your product on hand.

PAR. 8. That previous to December 10, 1920, the said respondent secretary received a communication from one of the members of said respondent association, suggesting that the said secretary prepare a list of manufacturers who guaranteed their proprietary brands against decline in price; and that when said list was so prepared, it be mailed to each member of the respondent association; that the said respondent secretary published said suggestion in the said bulletin under date of December 9th, and in said bulletin also requested that the different members of the respondent association send in a list of manufacturers whose product they handled and which manufacturers guaranteed their proprietary brands against decline in price; that the said secretary also asked the said members of respondent association to send him a list of manufacturers whose goods they handled who did not guarantee their proprietary brands against decline in price. To these requests so published in said bulletin, the said respondent secretary received very few replies; that one member of respondent association, whose name was not disclosed in said bulletin, sent in a list containing thirty-one names of manufacturers who guaranteed their products against decline in price; that the said list was published by said respondent secretary in a bulletin issued December 20, 1920, and when issued, said bulletin was sent to each member of the respondent association, also to each person whose name was on the said respondent secretary's mailing list; that previous to February 18, 1921, said respondent secretary received from one Alvin M. Graves, secretary of the Tri-State Wholesale Grocers' Association, an alphabetically arranged list containing the names of

99 manufacturers who guaranteed their products against decline in price; that said list so received was published in the bulletin issued by said respondent secretary on February 18th, and in said bulletin the said respondent secretary also requested members of the respondent association to check over the said list and notify the said secretary if there were any corrections necessary; that the bulletin containing said list above referred to was sent by said secretary of said respondent association to all the members of said association and to other persons whose names were on the mailing list kept by said respondent secretary; that, although contemplated, no list was prepared or published that gave the names of manufacturers who did not protect their proprietary brands against decline in price; that the names of several manufacturers who did not guarantee against decline were mentioned in bulletins to the membership, with derogatory comment by the various members whose letters were thus bulletined by the Secretary. That some of the bulletins issued by respondent secretary to the membership contained letters in which various members expressed themselves as disposed to push the products which manufacturers guaranteed against decline and to withhold cooperation in the sale of competing products which manufacturers did not guarantee against decline.

PAR. 9. That in December, 1920, a suggestion was made by one of respondent members and bulletined for the information of the membership, to the effect that goods not guaranteed against decline should be sold "at a reasonable price over what it costs us," as distinguished from the replacement cost on a declining market. Within a few days following this suggestion, a decline took place on an article not guaranteed against decline, whereupon, respondent secretary secured from one of his members a statement of what his future price on the goods in question would be, and announced such future price to the membership generally through an association bulletin. This price was higher than the jobbers' selling price contemplated by the manufacturer of the goods. A similar procedure was adopted with regard to another article not guaranteed against decline when the price was reduced by the manufacturer in May, 1921.

PAR. 10. That respondent secretary, in a bulletin to his members dated December 13, 1920, reproduced a letter from a member in which the member stated that guarantee against decline was necessary among other things "to prevent the serious price cutting between jobbers Proprietary Brands." The member's letter also said:

For instance, if the Genesee Pure Food Company had protected the jobber against decline on our floor stock of Jello, we would all have been selling practically at the manufacturers' suggested selling price to the trade, and none of us would have suffered a loss.

Not having this price protection, Jello has been sold all the way from $1.20 to $1.65 per dozen during the past thirty days and today we are all taking a severe loss on what we have on hand due to the manufacturer's recent decline of 90¢ per case.

We need the manufacturer's price guarantee in order to minimize losses and stabilize the market, and every jobber should make a strong plea along that line whenever he has occasion to correspond with them.

PAR. 11. That respondent's acts set forth in the foregoing paragraphs constituted a concerted effort and attempt to coerce or compel manufacturers to guarantee against decline on sales of their commodities to members of the association; that said acts had the capacity and tendency and were calculated to prejudice and injure the business of the manufacturers who did not guarantee their products against decline, to cause a refusal or curtailment of purchases from such manufacturers by the members of the association, and to benefit correspondingly the business of manufacturers who did guarantee their products against decline; that said acts had a dangerous tendency unduly to hinder competition between said two classes of manufacturers in the course of their interstate sales to respondent members; and that said acts had the capacity and tendency and were calculated to lessen substantially price competition among the members of respondent association.

CONCLUSION.

That the practices of the respondents, as set forth in the foregoing modified findings as to the facts are, in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel, and oral argument and the Commission having made its findings as to the facts and reached its conclusion that the respondents have violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent association, its officers and directors, individually and as representatives of the members, the successors of said officers and directors, and the members, their agents, representatives and employees cease and desist from cooperating among themselves or with others directly or indirectly to induce, influence, or coerce, and from inducing, influencing or coercing by cooperative methods, manufacturers from whom they purchase the goods and commodities in which they deal, to guarantee and assure them that in the event of a reduction in the prices charged them by said manufacturers for such commodities, each such respondent holding in stock at the time of such a reduction any of said commodities purchased prior to the time of such reduction will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by him in each instance for said commodities actually on hand and unsold and said reduced prices thereof:

(a) By the practice of publishing and distributing among the members of respondent association and others, communications and statements which directly or indirectly convey that manufacturers guaranteeing against decline are entitled to receive the cooperation and preferential patronage of members of respondent association or of the jobbers generally.

(b) By the practice of publishing and circulating among the members of respondent association and others, communications and statements which identify manufacturers not guaranteeing against decline and which directly or indirectly convey that such manufacturers are not equally entitled to the cooperation and patronage of members of respondent association or of the jobbers generally.

(c) By the practice of urging and requesting members of respondent association to make concerted protest and solicitation to manufacturers who do not guarantee against decline.

(d) By the practice of directly or indirectly conveying to manufacturers who refuse to guarantee against decline that such refusal would result in a lack of cooperation on the part of respondent jobbers or of jobbers generally.

(e) By the practice of directly or indirectly conveying to respondent members that in correspondence with manufacturers who refuse to guarantee against decline, they suggest that such refusal would result in a lack of cooperation on the part of respondent jobbers or of jobbers generally.

(f) By the practice of suggesting to members of respondent association that in their solicitation of manufacturers for guarantees

against decline they should urge the point that guarantee against decline is necessary and valuable as a means of protecting respondent members against price competition with each other.

(g) By the practice of soliciting the names of and information concerning manufacturers who do and those who do not guarantee the prices of their commodities against decline, and causing the names and policy of the former to be published and distributed among the members of respondent association and others.

(h) By utilizing any other equivalent cooperative means of obtaining from manufacturers guarantees or assurances against decline in the price of their commodities.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within 60 days from date of this order, their report in writing stating the manner and form in which this order has been conformed to.

ORDER OF DISMISSAL.

This proceeding having come on for hearing before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial Examiner's report upon the facts, and the exceptions thereto, and upon argument of counsel, and it appearing to the Commission that the respondents, Chesbrough-Moss Company, J. F. Rappel Company, and Mueller-Wild Company, since the issuance of the complaint herein have ceased to function as going concerns and are in fact out of business, and the Commission being fully advised in the premises,

It is ordered, That the complaint herein be, and the same is hereby dismissed, as against respondents Chesbrough-Moss Company, J. F. Rappel Company, and Mueller-Wild Company, for the reason that said respondents are no longer functioning as going concerns, but are in fact out of business.

FEDERAL TRADE COMMISSION

v.

C. N. DELLINGER, TRADING AS C. N. DELLINGER & COMPANY, AND JOHN M. THOMAS, TRADING AS TAMPA RIBBON CIGAR COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1090—June 6, 1924.

SYLLABUS.

Where cigars manufactured at Tampa, Fla., had come to be widely and favorably known and frequently referred to as "Tampa cigars"; and thereafter an individual engaged in the manufacture and sale of cigars made elsewhere than at Tampa, Fla., and of other than Havana tobacco; and a tobacco broker engaged in the sale of said cigars; sold said cigars in containers with labels containing the words "Tampa" and "Havana", and advertised the same as "Tampa Ribbon" cigars, with the capacity and tendency to mislead and deceive the purchasing public in reference to the place of manufacture, and composition thereof, and to induce their purchase in such mistaken belief, and to divert trade from accurately marked and advertised goods:

Held, That such misbranding or mislabeling, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Morgan J. Doyle for the Commission.

Mr. A. W. Herrmann, of York, Pa., for respondent C. N. Dellinger.

COMPLAINT.[1]

Acting in the public interest, pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that C. N. Dellinger, trading as C. N. Dellinger & Company, and Jno. M. Thomas, an individual trading as Tampa Ribbon Cigar Company, more particularly hereinafter described and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complain and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, C. N. Dellinger, trading as C. N. Dellinger & Company, with his principal office and place of business in the city of Red Lion, State of Pennsylvania, is now and has been

[1] As amended.

for more than one year last past engaged in the business of manufacturing and selling cigars in wholesale or retail quantities in interstate commerce. In the course of his said business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 2. Respondent, Jno. M. Thomas, an individual trading as Tampa Ribbon Cigar Company, with his principal office and place of business in the city of Indianapolis, State of Indiana, is now and has been for more than one year last past engaged as a broker, or for his own account, in the sale of cigars and other tobacco products in wholesale or retail quantities, in interstate commerce. In the course of his business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 3. Respondent, C. N. Dellinger, trading as aforesaid, in the course and conduct of his business, for more than one year last past has caused and still does cause the brand or label "Tampa Ribbon" to be placed on containers of cigars manufactured by him in the city of Red Lion, State of Pennsylvania, and in conjunction therewith, in numerous places on the outer border facings of said containers, in distinct lettering the word "Havana"; when, in truth and in fact, the tobacco from which his said product is manufactured is not grown on the island of Cuba and is not tobacco imported from the said island of Cuba, and is not tobacco generally known and recognized by the purchasing public as Havana tobacco.

PAR. 4. Respondent, Jno. M. Thomas, trading as aforesaid, in the course and conduct of his business, for more than one year last past, as a means of inducing the public to purchase cigars manufactured by respondent C. N. Dellinger, at Red Lion, Pennsylvania, from tobacco grown in the United States and on the containers of which was placed the brand or label "Tampa Ribbon" in conjunction with the word "Havana" on the outer border facings thereof, caused advertisements to be inserted in trade publications having general circulation through the several States of the United States, in which advertisements said cigars were offered for sale to purchasers and prospective purchasers under the said brand or label "Tampa Ribbon"; that the use by said respondent of the brand or label "Tampa Ribbon" in conjunction with the word "Havana" in the advertisement and sale of said cigars, is calculated and has the capacity or tendency to mislead and deceive the purchasing public into the belief that said cigars were manufactured in the City of Tampa, State of Florida, or the district in the immediate vicinity

of said city, and from tobacco grown on or imported from the island of Cuba and generally known and recognized by the purchasing public as Havana tobacco.

PAR. 5. Cigars have for many years been manufactured in the city of Tampa, State of Florida, and in the territory immediately surrounding said city and known as the Tampa district, and such cigars are frequently referred to as Tampa cigars. Such cigars have been and are manufactured principally from tobacco imported from the island of Cuba and generally known and referred to as Havana tobacco, and cigars made in said city and district of Tampa have acquired a wide and favorable reputation and are generally considered to be cigars of superior quality and workmanship, manufactured from Havana tobacco, which, by reason of similarity of climate and skilled workmanship, are surpassed only by cigars manufactured at Havana, Cuba.

PAR. 6. The cigars manufactured and sold by respondent C. N. Dellinger, trading as aforesaid, and advertised and sold by respondent Jno. M. Thomas, both individually and cooperating each with the other, upon the containers of which said cigars was placed the brand or label "Tampa Ribbon" in conjunction with the word "Havana," which said cigars were not manufactured in the City of Tampa, Florida, or in the territory immediately surrounding said city, known as the Tampa district, and which said tobacco used in the manufacture of said cigars was not grown on or imported from the island of Cuba, was intended to and did signify to the purchasing public that said cigars had, in fact, been manufactured in Tampa, Florida, or in the territory immediately surrounding said city, known as the Tampa district, and from tobacco generally known and recognized by the purchasing public as Havana tobacco.

PAR. 7. The words "Tampa Ribbon" on the containers of said cigars, and the label or legend "Havana" used by said respondent, C. N. Dellinger, have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the City of Tampa, State of Florida, or the territory immediately surrounding said city and known as the Tampa district, and to be cigars composed of tobacco grown on or imported from the island of Cuba and generally known and recognized by the purchasing public as Havana tobacco; that the use by respondent of said brands or labels, or similar legends, have the capacity or tendency to mislead and deceive the purchasing public into the belief that said cigars so branded, marked and labeled, were, in fact, manufactured in the city of Tampa, or in said Tampa district, and from tobacco grown on or imported from

for more than one year last past engaged in the business of manufacturing and selling cigars in wholesale or retail quantities in interstate commerce. In the course of his said business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 2. Respondent, Jno. M. Thomas, an individual trading as Tampa Ribbon Cigar Company, with his principal office and place of business in the city of Indianapolis, State of Indiana, is now and has been for more than one year last past engaged as a broker, or for his own account, in the sale of cigars and other tobacco products in wholesale or retail quantities, in interstate commerce. In the course of his business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 3. Respondent, C. N. Dellinger, trading as aforesaid, in the course and conduct of his business, for more than one year last past has caused and still does cause the brand or label "Tampa Ribbon" to be placed on containers of cigars manufactured by him in the city of Red Lion, State of Pennsylvania, and in conjunction therewith, in numerous places on the outer border facings of said containers, in distinct lettering the word "Havana"; when, in truth and in fact, the tobacco from which his said product is manufactured is not grown on the island of Cuba and is not tobacco imported from the said island of Cuba, and is not tobacco generally known and recognized by the purchasing public as Havana tobacco.

PAR. 4. Respondent, Jno. M. Thomas, trading as aforesaid, in the course and conduct of his business, for more than one year last past, as a means of inducing the public to purchase cigars manufactured by respondent C. N. Dellinger, at Red Lion, Pennsylvania, from tobacco grown in the United States and on the containers of which was placed the brand or label "Tampa Ribbon" in conjunction with the word "Havana" on the outer border facings thereof, caused advertisements to be inserted in trade publications having general circulation through the several States of the United States, in which advertisements said cigars were offered for sale to purchasers and prospective purchasers under the said brand or label "Tampa Ribbon"; that the use by said respondent of the brand or label "Tampa Ribbon" in conjunction with the word "Havana" in the advertisement and sale of said cigars, is calculated and has the capacity or tendency to mislead and deceive the purchasing public into the belief that said cigars were manufactured in the City of Tampa, State of Florida, or the district in the immediate vicinity

of said city, and from tobacco grown on or imported from the island of Cuba and generally known and recognized by the purchasing public as Havana tobacco.

PAR. 5. Cigars have for many years been manufactured in the city of Tampa, State of Florida, and in the territory immediately surrounding said city and known as the Tampa district, and such cigars are frequently referred to as Tampa cigars. Such cigars have been and are manufactured principally from tobacco imported from the island of Cuba and generally known and referred to as Havana tobacco, and cigars made in said city and district of Tampa have acquired a wide and favorable reputation and are generally considered to be cigars of superior quality and workmanship, manufactured from Havana tobacco, which, by reason of similarity of climate and skilled workmanship, are surpassed only by cigars manufactured at Havana, Cuba.

PAR. 6. The cigars manufactured and sold by respondent C. N. Dellinger, trading as aforesaid, and advertised and sold by respondent Jno. M. Thomas, both individually and cooperating each with the other, upon the containers of which said cigars was placed the brand or label "Tampa Ribbon" in conjunction with the word "Havana," which said cigars were not manufactured in the City of Tampa, Florida, or in the territory immediately surrounding said city, known as the Tampa district, and which said tobacco used in the manufacture of said cigars was not grown on or imported from the island of Cuba, was intended to and did signify to the purchasing public that said cigars had, in fact, been manufactured in Tampa, Florida, or in the territory immediately surrounding said city, known as the Tampa district, and from tobacco generally known and recognized by the purchasing public as Havana tobacco.

PAR. 7. The words "Tampa Ribbon" on the containers of said cigars, and the label or legend "Havana" used by said respondent, C. N. Dellinger, have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the City of Tampa, State of Florida, or the territory immediately surrounding said city and known as the Tampa district, and to be cigars composed of tobacco grown on or imported from the island of Cuba and generally known and recognized by the purchasing public as Havana tobacco; that the use by respondent of said brands or labels, or similar legends, have the capacity or tendency to mislead and deceive the purchasing public into the belief that said cigars so branded, marked and labeled, were, in fact, manufactured in the city of Tampa, or in said Tampa district, and from tobacco grown on or imported from

the island of Cuba, and generally known and recognized by the purchasing public as Havana tobacco.

PAR. 8. That the above alleged acts and things done by respondent are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondents C. N. Dellinger, trading as C. N. Dellinger & Company, and Jno. M. Thomas, trading as Tampa Ribbon Cigar Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent Dellinger entered his appearance on the 10th day of December, 1923, and respondent Thomas entered his appearance on the 26th day of November, 1923, and thereupon,

Respondent Dellinger on the 31st day of January, 1924, and respondent Thomas on the 7th day of January, 1924, made, executed and filed agreed statements of facts, in which it was stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statements of facts in this case in lieu of testimony and proceed therewith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent C. N. Dellinger is an individual trading as C. N. Dellinger & Company, with his principal office and place of business in the city of Red Lion, Pennsylvania. He has been and still is engaged in the business of manufacturing and selling cigars in wholesale quantities and causing said cigars when so manufactured and sold to be transported to, into and through various other States of the United States and the District of Columbia. In the course of his business respondent was, and still is, in competition with other individuals, firms, partnerships and corporations likewise engaged in the manufacture, sale and distribution of cigars in commerce.

Respondent Jno. M. Thomas is an individual trading as Tampa Ribbon Cigar Company, with his principal office and place of business in the city of Indianapolis, Indiana. He has been and still is engaged as a broker, and, on his own account, in the sale and distribution of cigars and other tobacco products in wholesale quantities. He causes said cigars and other tobacco products, when so sold by him, to be transported to, into and through various other States of the United States and the District of Columbia. In the course of his business respondent was and still is in competition with other individuals, firms, partnerships and corporations likewise engaged in the sale and distribution of cigars and other tobacco products in commerce.

PAR. 2. Respondents Dellinger and Thomas, in the course of their respective businesses, entered into an understanding and agreement, each with the other, and in which agreement respondent Dellinger agreed to manufacture, pack, label, and ship certain cigars for and on behalf of respondent Thomas. Respondent Dellinger further agree to manufacture said cigars at Red Lion, Pennsylvania, and to make them from tobacco grown within the United States. Respondent Thomas agreed to furnish the labels and brands to be attached to said cigars and boxes. The cigars manufactured under the agreement between respondents Dellinger and Thomas were made at Red Lion, Pennsylvania, from tobacco grown in the United States, and were not made from Havana Tobacco, i. e., tobacco grown on or imported from the Island of Cuba.

After said cigars were so manufactured, respondent Dellinger, under said agreement, packed them at Red Lion, Pennsylvania, in boxes, and, at the request and direction of, and for and on behalf of, respondent Thomas, attached certain labels to said boxes. The labels so attached to said boxes were furnished by respondent Thomas and contained the words "Tampa" and "Havana."

PAR. 3. After said cigars were so manufactured, packed and labeled, respondent Dellinger, at the direction of and on behalf of respondent Thomas, caused said cigars so packed and labeled to be transported from Red Lion, Pennsylvania, to, into and through other States of the United States and into the District of Columbia, consigned to persons to whom said cigars had been sold by respondent Thomas.

PAR. 4. Respondent Jno. M. Thomas, in the course of his business, caused advertisements to be inserted in trade publications having general circulation throughout the United States. In said advertisements the cigars manufactured, packed and labeled as aforesaid

were offered for sale to purchasers under the name and brand "Tampa Ribbon" cigars.

PAR. 5. For many years cigars have been manufactured in the city of Tampa, Florida, and in the territory immediately surrounding said city and known as the Tampa District; that such cigars are frequently referred to in the trade and among the purchasing public as "Tampa cigars"; that cigars made in said city or district have acquired a wide and favorable reputation and are generally considered to be cigars of superior quality and workmanship.

PAR. 6. The word "Tampa," when used on the containers of cigars or in the advertisement thereof, is understood by a substantial part of the purchasing public to mean that such cigars were manufactured in the city of Tampa, Florida, or in the territory immediately surrounding said city.

The word "Havana" when used on the containers of cigars or in the advertising thereof is understood by a substantial part of the purchasing public to mean that such cigars were manufactured from tobacco grown on or imported from the Island of Cuba and generally known as Havana tobacco.

PAR. 7. The words "Tampa" and "Havana," when used by respondents as aforesaid, have the tendency and capacity to mislead and deceive the purchasing public into the belief that said cigars were manufactured in the city of Tampa, Florida, or in the territory immediately surrounding said city, and that said cigars were manufactured from tobacco grown on or imported from the Island of Cuba, and generally known as Havana Tobacco, and to cause persons to purchase said cigars in that belief.

PAR. 8. The use by respondents in the manner aforesaid of the words "Tampa" and "Havana" has the tendency and capacity to divert trade from accurately marked and accurately advertised goods.

CONCLUSION.

The practice of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the

respondents, and agreed statements of fact filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondents, C. N. Dellinger, trading as C. N. Dellinger & Company, and Jno. N. Thomas, trading as Tampa Ribbon Cigar Company, cease and desist from—

(1) Using the word "Tampa," alone or in combination with any other word or words, in labels, brands, or legends on cigars or on the containers thereof, or in advertisements thereof in connection with the manufacture and sale or distribution of cigars, if such cigars are in fact not made in the city of Tampa, Florida, or the Tampa District in the State of Florida;

(2) Using the word "Havana," alone or in combination with any other word or words, in labels, brands or legends on cigars or on the containers thereof, or in advertisements thereof, in connection with the manufacture and sale or distribution of cigars, if such cigars are not composed of tobacco grown in and imported from the Island of Cuba.

It is further ordered, That said respondents shall, within sixty (60) days after the service upon them of a copy 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

CHARLES TAGER, TRADING AS AN INDIVIDUAL UNDER THE NAME OF REGAT SALES COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1025—July 8, 1924.

SYLLABUS.

Where a corporation engaged as the Acme Staple Co. in the manufacture of a tacking machine and staples for use therein, and in the sale thereof under the trade name "Acme" through different concerns in continuously increasing quantities for many years; and thereafter a competitor in the sale of such products, doing business as the Acme Tacking Machine Co., and under other names as best suited his purpose, and dealing in a machine and staples therefor, which was inferior to the genuine Acme machine, and sold at a substantially lower price,

(*a*) Falsely represented to the trade and to customers of his competitors that the aforesaid Acme products were no longer being manufactured and sold and that his products were, because of their superior quality taking the place of the former, and that one of the competing concerns through which Acme products had theretofore been sold, had discontinued business, and been absorbed and succeeded by him;

(*b*) Falsely represented to customers of said competing concern that said concern was now doing business under the name used by him, and that as its agent, and alleged former distributor of the aforesaid Acme products which he claimed theretofore to have sold to them as one and the same concern with competitors, he was taking up the discontinued Acme products and replacing the same with those dealt in by him, and that he had been instructed so to do by said competing concern, his alleged principal;

With the result that customers of competitors were induced to deliver up their Acme products to him and to purchase instead those dealt in by him, to their injury and loss, and that of his competitors;

(*c*) Falsely represented to a customer of one of his aforesaid competitors, with whom he had formerly dealt as said competitor's representative, that such competitor had discontinued the said Acme products in favor of those dealt in by him, and would make an allowance upon the former in a transaction involving the turning in of said products and the purchase of the latter; with the result that said customer purchased the products dealt in by him in the mistaken belief that he was dealing with the old concern, to his total loss due to such products proving inefficient and of no value:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Charles Melvin Neff for the Commission.

Mr. David Leavenworth of New York City for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Charles Tager, an individual trading under the name of Regat Sales Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles Tager, is an individual doing business and trading under the name of Regat Sales Co. with principal office and place of business at 250 West Fifty-fourth Street, New York City. He is now and at all times hereinafter mentioned has been engaged in the business of selling tacking machines and staples used for tacking labels and addresses on boxes, barrels, and other similar containers, to stores, factories, and other business establishments located throughout the several States of the United States, and causes said machines and staples, when sold by him, to be transported from his place of business in the city of New York, State of New York, to, into and through other States of the United States and in the District of Columbia to the purchasers thereof. In the sale of said products said respondent employs no salesmen but solicits orders himself either directly or through the mail. In the course and conduct of his said business said respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture and sale of tacking machines and staples including particularly the Markwell Manufacturing Co. and the Botts Marking Ink Co., both located in New York City, who sell the Acme tacking machines and staples manufactured by the Acme Staple Company, Camden, N. J., to the same class of trade throughout the several States.

PAR. 2. For a number of years said respondent was employed by said Botts Marking Ink Co. in the sale of Acme tacking machines and staples and in or about the year 1919 said respondent started in business for himself under the name of Port Arthur Tacking Machine Co., selling said Acme tacking machines and staples which he purchased from a broker representing the said Acme Staples Co. in New York City. In or about the year 1920 he changed his trade name to the Regat Sales Co. and continued to buy and sell the Acme tacking machines and staples. On or about January 1921, said respondent, as aforesaid, while continuing to buy and sell

the Acme tacking machines and staples, began the sale of tacking machines and staples manufactured for him by the Hotchkiss Sales Co., Norwalk, Conn., under the name "Regat." The staples of the Acme tacking machine could not and can not be used in the Regat tacking machine and likewise the staples of the Regat tacking machine could not and can not be used in the Acme tacking machine. Respondent has since pushed the sale of said Regat tacking machines and staples in preference to the Acme tacking machines and staples.

PAR. 3. Said respondent in the course and conduct of his said business during the two years last past has made and is making numerous false, misleading, and deceptive representations to customers and prospective customers with respect to the manufacturer and distributors of the said Acme tacking machines and staples. Among a number of said false and misleading representations are the following:

(*a*) Respondent assumed the name of, and represents himself to be, the Acme Tacking Machine Co., as manufacturer and distributor of Acme tacking machines and staples;

(*b*) Respondent represented and now represents that the Acme tacking machines and staples were and are no longer being manufactured and sold, and that the Regat tacking machine and staples were and are taking the place of the Acme because of their superior qualities;

(*c*) Respondent represented and now represents that the said Markwell Manufacturing Co., Inc., and the Botts Marking Ink Co., had gone out of business and were and are no longer selling the said Acme tacking machines and staples;

(*d*) Respondent represented and now represents himself to be the successor of the said Markwell Manufacturing Co., Inc., and other distributors of Acme tacking machines and staples;

(*e*) That respondent is a representative of the Markwell Manufacturing Co., Inc., and its products; that said Sales Company had an improved machine, to-wit, the Regat tacker, and was putting Regat tackers on the market in place of the Acme tackers, on account of their being a better machine; that most users of the Acme machine were making complaints of those machines and that the Regat Sales Company were engaged in calling in all Acme tackers and Acme staples, and exchanging same for Regat tackers and staples;

(*f*) That the Acme tackers and Acme staples were out of the market or were being taken out of the market, either or both, and that it would be impossible to purchase Acme tackers and Acme staples, either or both, in the future;

(*g*) That if buyers wanted tackers or staples it would be necessary to take the Regat tackers and staples.

Whereas the respondent had no authority from the Acme Staple Co., the manufacturer of the Acme tacker and Acme staples, to represent himself as the Acme Tacking Machine Co. That the Acme Staple Co. was at all times herein mentioned, and now is, the sole manufacturer of said Acme tacking machines and staples; that the said Acme tacking machines and said Acme staples were at all times mentioned herein and now are being manufactured and sold; that the respondent never has represented, and does not now represent, the said Markwell Manufacturing Co., Inc., in any way; that the said Markwell Manufacturing Co., Inc., and the said Botts Marking Ink Co., were, at all the times mentioned herein, and now are, doing business and engaged in the business of selling and distributing Acme tacking machines and Acme staples; that respondent at no time was, and is not now, the successor of the said Markwell Manufacturing Co., Inc., or the successor of the Botts Marking Ink Co., or other distributors of the Acme tacking machine and Acme staples; that the Regat Sales Co. at no time has taken over the Markwell Manufacturing Co., Inc., and its products; that the Acme tacker and Acme staples are not, and were not at any of the times mentioned herein, out of the market or being taken out of the market, either or both, and it is not true that it is impossible, or that it will be impossible in the future, to purchase Acme tackers and Acme staples; and it is not true, if buyers wanted Acme tackers or staples at any of the times mentioned herein, or want them in the future, that it would have been or would now be necessary to purchase Regat tackers and staples.

PAR. 4. Said respondent by resorting to false, misleading, and deceptive representations, including those set forth and described in paragraph 3 hereof, persuaded and induced customers and prospective customers who were using Acme tacking machines and staples purchased from said Markwell Manufacturing Co., Botts Marking Ink Co., and other competitors, to discontinue using said Acme tacking machines and staples and exchange the said Acme tacking machines for the said Regat tacking machines and to purchase large supplies of Regat staples which respondent was then selling, thus preventing the said Markwell Manufacturing Co., Botts Marking Ink Co., and other competitors from selling staples to their customers to whom Acme tacking machines had been sold and to whom they had been, from time to time, selling Acme staples to be used in said Acme tacking machines.

PAR. 5. The above alleged acts and things done by respondent are opposed to good morals, being characterized by deception and bad faith, and are against public policy because of their dangerous tendency unduly to hinder competition in the sale of tacking machines and staples to the users thereof throughout the United States, and said alleged acts and things therefore constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Charles Tager, trading under the name of Regat Sales Co. and other names, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, Charles Tager, trading as aforesaid, having filed his answer and entered his appearance by his attorney David Leavenworth, and hearings having been had before George McCorkle, an examiner of the Commission, heretofore duly appointed, and testimony and evidence having been introduced in support of the allegations of the complaint, and testimony and evidence having been introduced by the respondent in support of his defense, and argument having been made in final hearing before the Commission sitting at Washington, District of Columbia, by Charles Melvin Neff, attorney for the Commission, in support of the complaint, and by David Leavenworth in behalf of the respondent, and the Commission having fully considered the testimony and the evidence, does now, after due deliberation, make this its findings of fact and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent herein has, ever since July 7, 1919, been trading as an individual under the names of Charles Tager, Charles I. Tager, Charles Taiger, and Charles I. Taiger, and that he has also, as an individual, been trading under the business name of REGAT SALES COMPANY ever since August 19, 1919, and under the business name of THE PORT ARTHUR COMPANY since August 21, 1919, and under the business name of ACME TACKING MACHINE COMPANY since June 19, 1922. That the respondent at no time since he

first began their use ever abandoned the use of any of the foregoing names but, on the contrary, used one or more of them to carry on his business as in his judgment the particular occasion seemed to require. That at no time has he under the above or any other names ever made Acme tacking machines or Acme staples. That the word "REGAT" in the said business name "REGAT SALES COMPANY" and in the phrases "Regat tackers" and "Regat staples" to be herein hereafter used is the respondent's surname spelled in the reverse order. That his office and principal place of business and the place from which he shipped the goods he sold under these various names was at one time No. 2010 Lexington Avenue, New York City, but that it is now and for some months before the issuance of the complaint herein was, at No. 250 West Fifty-fourth Street, New York City.

PAR. 2. That the respondent is now, and, continuously ever since he began trading under the foregoing names, has been engaged under each of them in the business of selling and distributing tacking machines and the staples for use therein, more particularly the Regat tackers and Regat staples, throughout the States and Territories of the United States and the District of Columbia, in competition with the Markwell Manufacturing Co., Inc., Alexander Botts, an individual trading under the name of the Botts Marking Ink Co., and with others engaged in selling and distributing the Acme tackers and the Acme staples. That after selling the Regat tackers and staples the respondent caused the same to be transported by freight, express or by parcels post from his place of business in New York City to his customers located in the various States and Territories of the United States and the District of Columbia.

PAR. 3. That tacking machines are used by factories, fruit houses, grocers, hardware dealers, and others to fasten cards, address slips and shipping directions upon commercial containers and by screen door and window makers. They do away with the inconvenience, the loss of time and the accidents attendant upon the use of hammers and tacks. That in both the Acme and the Regat tackers the general principle of operation is the same. Staples are slipped through the rear end of the tacker into a channel parallel to its base. They are then by a spring automatically pushed along a staple bar within the channel and forward into a throat in the front end of the tacker at right angles to the feeding channel. In this throat and immediately above the staple there is a sleeve through which a plunger, when struck by the hand, descends upon

the staple and drives it through the address card and into the commercial container.

PAR. 4. That the staples made for use in the Acme tackers are individual pieces fabricated from hard steel and until placed into the tackers are held together by a rubber band upon a core. The Regat staples, on the other hand, are stamped out of untempered metal into strips through which runs a small center rib. Each Regat staple is made by the aforesaid plunger when it descends by severing the partly formed staple from this center rib. It is necessary that the plunger cut off every staple used. It soon becomes dull, refuses to cut, the staple bends in the throat, the machines become jammed and clogged and of no further use until repaired. The Regat staples can not be used in the Acme tackers and neither can the Acme staples be used in the Regat tackers.

PAR. 5. That the Acme tacker is superior to the Regat tacker in the material from which it is made, the method of fabrication and in the manner of operation. Its every part, if broken, may be replaced by the factory. The Acme tacker is provided with an anticlogging device which prevents the plunger from returning for another staple after being struck until the one already in the throat has entered the material to be fastened. It can not clog. The Regat tacker is made from a one-piece magazine casting, the bar being fastened by a few rivets. The parts of the Regat tacker are not interchangeable and can not be replaced. It has no anticlogging device and when it becomes clogged or jammed by a staple the machine's effectiveness is destroyed.

PAR. 6. That the Acme machine is made to sell at from $3.50 to $5 and the Regat machine at $1.75. The Regat staples sold for less than Acme staples. Regat machines can be made in quantities for 10 cents each. Indeed, save in two instances, the respondent in all of the sales, made in competition with the Acme tackers, gave away the Regat machines and charged only for the staples, whereas he always charged for the Acme tackers when he sold Acme staples.

PAR. 7. That the Acme company is a New Jersey corporation organized in 1911, having its factory and principal office at 1643 Haddon Avenue, Camden, N. J. It has since its organization manufactured and sold the Acme and the Acme Sure Shot tacking machines and the staples for use therein. The products of this corporation for many years have been and are now sold throughout the United States, its possessions, and in foreign countries. The word "Acme" is the trade name of the corporation and is an asset of the Acme Staple Co. The whole product of the Acme Staple Co., wherever sold, is known through this trade name. The use of the word

"Acme" in the name of "Acme Tacking Machine Co.," one of the business names of the respondent, was never authorized by the Acme Staple Co. The Acme Staple Co. is in no way connected with the Acme Tacking Machine Co.

PAR. 8. That the Acme Staple Co., which manufactures all of the Acme tacking machines, Acme, Sure Shot, etc., and the staples for use therein, has been continually increasing its business from year to year. The increase of machines during the fiscal year 1919–1920 was 450 machines, and 81,790,600 staples over the previous year. The increase in the fiscal year 1920–1921 was 2,683 machines and 287,307,600 staples over the former year, while the increase in machines in 1921–1922 over the previous year was 1,415, while in staples it was 177,746,000 staples. Its increase in business has been such as to oblige it to acquire additional real estate in order to provide for more factories. Architects are now planning new buildings to be erected thereon.

PAR. 9. That Alexander Botts began trading in 1907 as an individual under the name of the "Botts Marking Ink Co." After a few years he organized a corporation called the "Botts Marking Ink Co., Inc." In 1920 this corporation went out of existence and the said Botts at once resumed trading as an individual under the former trade name of the Botts Marking Ink Co. His office and principal place of business has been at all times and now is at No. 68–76 Third Street, Brooklyn, Borough of Brooklyn, New York City. By means of traveling salesmen and through the mail he sold, and by freight, express and parcel post he distributed Acme tacking machines and staples throughout the United States and Canada, to shippers of all kinds and to screen door and window makers. In such sales he has been since about July 7, 1919, in direct competition with Charles Tager, the respondent, under his various individual and trade names.

PAR. 10. The Markwell Manufacturing Co., Inc., is a New York corporation organized in January, 1920, with its office and principal place of business at 176 Franklin Street, New York City. Ever since that date it has been continuously and is now engaged in selling Acme tackers and Acme staples by traveling salesmen and by the United States mail throughout the United States and the District of Columbia. The tackers and staples so sold are thereafter delivered from New York City by freight, express and by parcel post. In the sale and distribution of said tackers and staples the company is in competition with respondent Tager under his aforesaid various personal and trade names.

PAR. 11. That in competition, as aforesaid, with the said Markwell Manufacturing Co., Inc., the Botts Marking Ink Co., Inc., Alexander Botts, trading as an individual under the trade name of the Botts Marking Ink Co. and with others, the respondent herein has, ever since he began business in July, 1919, stated to the trade and to customers of his said competitors that the said Acme tacking machine and said Acme staples were and are no longer being manufactured and sold, and that the said Regat tackers and said Regat staples were, because of their superior qualities, taking the place of the said Acme tackers and staples. That these statements were at all of said times and when made and are now false and untrue and misleading. That the said Acme tackers and Acme staples were at all of said times and continuously manufactured, offered for sale and sold and are now being made and sold in ever increasing quantities. That the Regat tackers were at no time nor are they now superior to the Acme tackers and that the Regat staples were at no time nor are they now superior to the Acme staples. That on the contrary the said Acme tackers and Acme staples were at all times and are now superior to the said Regat tackers and staples in material, construction, and operation.

That because of the above false statements, and believing said statements and relying upon them as true, the following customers of the respondent's competitors were by said statements induced to give up the use of Acme tackers and staples and to buy Regat tackers and Regat staples from the respondent, all to the injury of the business and financial loss of said competitors, to the said Acme Staple Co. and to the said customers of the said competitors. That some of the aforesaid purchasers are, together with financial losses resulting therefrom, as follows:

	Loss.
Aaron Carlson, Inc	$200.56
Burns Lumber Co	70.10
Langeland Manufacturing Co	100.70
The Thomas Produce Co	140.25
The John Pritzlaff Hardware Co	227.28
Field & Start, Inc	191.99
Sheboygan Dairy Products Co	138.18
Moore & Galloway Lumber Co	206.02
Total	1,275.05

PAR. 12. That in competition, as aforesaid, with the said Markwell Manufacturing Co., Inc., the Botts Marking Ink Co., Inc., Alexander Botts, trading as an individual under the trade name of the Botts Marking Ink Co., and with others, the respondent herein has from time to time ever since he began business in July, 1919, to the trade

and to customers of his said competitors stated that the said Markwell Manufacturing Co., Inc., had gone out of business, and were and are no longer selling the said Acme tackers and staples, that the Regat Sales Co. had absorbed the said Markwell Manufacturing Co., Inc., and was its successor and had taken over the products of the said Markwell Manufacturing Co., Inc., and that the Acme tackers and staples were and are no longer being made and sold, and that the Regat tackers and staples were and are taking the place of the Acme tackers and staples.

PAR. 13. That these statements were at all of the said times and when made and are now false and untrue. That the facts were at all of said times and now are that the said Markwell Manufacturing Co., Inc., was at all of said times and now is engaged in business as aforesaid in selling Acme tackers and staples, that the Regat Sales Co. had at no time absorbed or succeeded the said Markwell Manufacturing Co., Inc., nor had it at any time taken over the products of the latter company, and that at all of said times the said Acme tackers and staples were being sold and distributed by the said Markwell Manufacturing Co., Inc., the Botts Marking Ink Co., Inc., and Alexander Botts, its successor, trading as an individual under the trade name of the Botts Marking Ink Co.

PAR. 14. That because of the above false statements and believing and relying upon them as true the following customers of the above mentioned competitors of the respondent were by said statements induced to give up the use of said Acme tackers and staples and to buy Regat tackers and staples from the respondent, all to the injury of the business and financial loss to said competitors, to the said Acme Staple Co. and the said customers of the said competitors. These said customers with their respective losses are:

1. Segal Co.—Fraud discovered; no loss, goods returned.
2. H. C. Bartels—Refused to purchase; no loss.
3. Curtiss-Yale-Holland Co.—Fraud discovered; no loss, goods returned.

	Loss.
4. Langeland Manufacturing Co	$100.72
5. The Thomas Produce Co	140.25
6. Sheboygan Dairy Products Co	138.18
7. Burns Lumber Co	70.10
8. Lake Street Sash & Door Co	46.05
9. Aaron Carlson, Inc	200.56
10. The Moore & Galloway Lumber Co	206.02
Total	901.88

PAR. 15. That in competition, as aforesaid, with the Markwell Manufacturing Co., Inc., the respondent, in April, 1922, stated in

substance to the St. Paul Table Co., St. Paul, Minn., at that time a customer of the Markwell Manufacturing Co., Inc., that he was the agent and representative of the said Markwell company which had hitherto been selling Acme tackers and staples to the said St. Paul Table Co.; that the said Markwell company was no longer doing business under that name but was then doing business under the name of the Regat Sales Co.; that the said Markwell company was no longer making the said Acme tackers and staples and that as a representative of the Regat Sales Co. he was taking up all the Acme tackers and staples and selling Regat tackers and staples instead.

PAR. 16. That in April, 1922, the respondent called upon Brooks Brothers, Inc., of St. Paul, Minn., and stated in substance to said Brooks Brothers, then a customer of said Markwell Manufacturing Co., that the Regat Sales Co., which he was then representing was the former distributor or agent of the Acme tackers and staples and was one and the same concern with the said Markwell Manufacturing Co.; that the Regat Sales Co. had previously sold Brooks Brothers the Acme tackers and staples which they then possessed and was now replacing them with Regat tackers and staples.

PAR. 17. That believing and relying upon the said statements the said St. Paul Table Co. and the said Brooks Brothers, Inc., were induced by them to deliver up to the said Regat Sales Co. their Acme tackers and staples and to make purchases of Regat staples in their place amounting respectively to $18.75 and $323.23. That the Regat tackers and staples so purchased proved inefficient and worthless and could not be used, and that as a result thereof the said purchases were a total loss.

PAR. 18. That in March, 1922, the respondent stated to A. F. Schwahn & Co., of Eau Claire, Wis., at that time a customer of the said Markwell company, that he (Tager) was a representative of the said Markwell company, that the said company had instructed him (Tager) to take in or have returned by its customers all Acme tackers and staples and that they would be replaced by the said Markwell company by a new device called the Regat tackers and staples which were more efficient. That the said Schwahn & Co. did return the said Acme tackers but not to Tager but to the said Markwell Manufacturing Co. instead, in consequence of which no financial loss by purchaser was suffered.

PAR. 19. That none of the above statements were true and all were false. The respondent was at no time either under his own or business names an agent or representative of the said Markwell Manufacturing Co., Inc. The said Markwell Manufacturing Co., Inc.,

never at any time did business under the name of the Regat Sales Co., nor did the respondent have at any time any authority from the Markwell Manufacturing Co., Inc., to take up Acme tackers and staples and to substitute in place therefor Regat tackers and staples, neither had the Regat Sales Co. ever sold Acme tackers and staples to the said Brooks Brothers, Inc.; that these statements injured the business of the said Markwell Manufacturing Co., Inc., and caused it financial loss.

PAR. 20. That from about December 6, 1916, and until July 7, 1919, the said Tager was employed by Alexander Botts, that is, by the Botts Marking Ink Co., Inc., as one of its salesmen; that as such he traveled throughout the United States selling for it said Acme tackers and staples and so became acquainted with its customers. That on or about the 7th day of July, 1919, Tager left the employ of the said Botts Marking Ink Co., Inc., and began business for himself under his various individual and other business names in competition with the Botts Marking Ink Co., Inc., and with Alexander Botts, later doing business as an individual under the name of Botts Marking Ink Co., and with the Markwell Manufacturing Co., Inc., in the sale and distribution of tackers and staples.

PAR. 21. That after he had left the employ of the said Botts Marking Ink Co., Inc., and after the said Alexander Botts had resumed the business of selling Acme tackers and staples under the name of the Botts Marking Ink Co., and after Tager, as an individual under the said name of Regat Sales Co. and his other said names had, in competition with the said Botts Marking Ink Co., Inc., and others, began selling Regat tackers and staples, and in the fall of 1922 he called, for the purpose of making sales of said Regat tackers and staples, upon Harwood Brothers, Inc., of Richmond, Va., to whom, formerly, as a customer of said Botts Marking Ink Co., Inc., he had as its said agent and salesman sold Acme tackers and staples.

PAR. 22. That at the time said Tager called upon said Harwood Brothers, Inc., he did not disclose to them that he was no longer a salesman for the Botts Marking Ink Co., Inc., and that he was in business for himself and selling, under the name of Regat Sales Co., Regat tackers and staples in competition with his former employer. He said to a Mr. King, a buyer for Harwood Brothers, Inc., to whom as salesman for the said Botts Marking Ink Co., Inc., he had formerly sold Acme tackers and staples, "Mr. King, we are putting out a new machine (meaning the Regat tacker) to take the place of this old one (meaning the Acme tacker); send the two old machines back; or I will send you two machines for them, and send back all of your old staples and I will refund you other staples with the

understanding that you will buy a certain number of staples for this new machine we are putting out;" that neither said King nor Harwood Brothers, Inc., knew said Tager had left the employ of said Botts Marking Ink Co., Inc., and that he was then a competitor of it, but on the contrary from Tager's conversation at that time, and from previous dealings with him, still believed that he was then representing the said Botts Marking Ink Co., Inc., and intended to and thought he was contracting with the said Botts Marking Ink Co., Inc., and that had he known that Tager was no longer representing the said Botts Marking Ink Co., Inc., he would not, without further investigation, have dealt with him. In consequence of Tager's nondisclosure and under the belief that he was buying from his former vendor, King, for Harwood Brothers, Inc., made a purchase of Regat tackers and staples, for which he paid the sum of $83.12. The said tackers and staples proved to be inefficient and of no value and the sale amounted to a dead loss.

PAR. 23. That after the sale was made Tager directed Harwood Brothers, Inc., to send back the Acme tackers and staples to Tager's New York City address that by mistake the goods were sent to Markwell Manufacturing Co., Inc., with whom Harwood Brothers, Inc., had also previously dealt; that after waiting awhile for the said Acme tackers and staples and not receiving them Tager wired to Harwood Brothers, Inc., to send them, to which wire Harwood Brothers, Inc., replied that the goods had by mistake been sent to said Markwell Manufacturing Co., Inc.; that thereupon Tager sent the following wire to Harwood Brothers, Inc.:

"WIRE MARKWELL MFG. CO. TO RETURN YOUR STAPLES DON'T TELL THEM ABOUT TRANSACTION OR ABOUT NEW MACHINES LETTER FOLLOWING."

Then Tager immediately afterwards sent the following letter to Harwood Brothers, Inc.:

THE REGAT SALES COMPANY, Sole Distributors for the United States and Foreign Countries for the REGAT Automatic Tacking Machines and Staples. Foreign branches: Manchester, Eng., Leipsig, Germany.

2010 LEXINGTON AVE.,
New York, N. Y., 10/21/22

HARWOOD BROS., Inc.,
Richmond, Va.
(Att'n Mr. W. E. King.)

GENTLEMEN: We have before us your valued favor of Oct. 18th which we have just received and have wired you as follows:

"WIRE MARKWELL MFG. CO. TO RETURN YOUR STAPLES, DON'T TELL THEM ABOUT TRANSACTION OR ABOUT NEW MACHINES, LETTER FOLLOWING."

We regret that you have made the mistake by sending the old staples back to the Markwell people, and we would ask you please, to ship these

staples back to us by parcel post as soon as you receive them from the Markwell Co.

We trust that you will attend to this as soon as possible, at the same time, we wish to ask you not to explain or advise the Markwell Co. in regards to our transaction or anything about our new machines.

Thanking you for past favors, we remain,

Yours very truly,

THE REGAT SALES CO.
(Signed) CH. TAGER.

CONCLUSION.

That the aforesaid nondisclosure, false statements, practices and methods of competition by the respondent have the capacity and the tendency to deceive and in many instances have actually deceived the general public and the competitors of the said respondent to their great inconvenience and to their financial loss, and are unfair methods of competition in interstate commerce and constitute a violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent herein, Charles Tager, doing business under the name of the Regat Sales Co., and various other names, and the testimony and exhibits submitted, and the Commission after full consideration thereof and due deliberation having made its findings of fact, and its conclusion that the said respondent violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the said respondent cease and desist from:

1. Representing that the Acme tacking machines and staples for use therein are no longer being manufactured.

2. Representing that the Regat tacking machines and staples, or machines and staples like them, have been or are now taking the place of Acme tacking machines and staples, because of alleged superior qualities.

3. Representing that the Markwell Manufacturing Co., Inc., has gone out of business and is no longer engaged in selling the said Acme tacking machines and staples.

4. Representing that the Botts Marking Ink Co. has gone out of business and is no longer selling the said Acme tacking machines and staples.

5. Representing himself to be the successor of the said Markwell Manufacturing Co., Inc., or other distributors of the said Acme tacking machines and staples.

6. From stating that he is a representative of the Markwell Manufacturing Co., Inc., or that he is a representative of the products of the said Markwell Manufacturing Co., Inc.

7. From stating that as a representative of the Markwell Manufacturing Co., Inc., and its products he has an improved tacking machine and that he is putting the same on the market in place of Acme tackers on account of any alleged superiority of said Acme tackers.

8. From representing that the Acme tackers and staples, either or both, are out of the market or are being taken out of the market, either or both.

9. From representing that it is or will be impossible to purchase Acme tackers or Acme staples, either or both.

10. From representing that if buyers want tackers or staples it will be necesary to purchase Regat tackers and Regat staples.

11. From making any other false and untrue statements concerning the products or the business of the Acme Staples Co., or the Markwell Manufacturing Co., Inc., or the Botts Marking Ink Co., either or any of said companies.

And it is further ordered, That the respondent file with the Federal Trade Commission within 30 days from the date of the service of this order upon him his report in writing, setting forth in detail the manner and form in which the respondent has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

SAMUEL KATZ AND SAMUEL DAVIDSON DOING BUSINESS UNDER THE NAME AND STYLE OF KATZ & DAVIDSON.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1065—July 8, 1924.

SYLLABUS.

Where a firm engaged in the manufacture of men's shirts from a domestic cotton fabric termed "broadcloth" and in the sale thereof, labeled said shirts "English Broadcloth," and so sold the same in competition with concerns which so described their product only when made of a fabric imported from England, with the effect of misleading the retail trade and a substantial portion of the purchasing public in respect of the source of the material of which said garments were made:

Held, That the sale of products labeled as above set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Alex M. Hamburg of New York City, for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Samuel Katz and Samuel Davidson doing business under the name and style of Katz & Davidson, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Katz & Davidson with their principal place of business in the City and State of New York. They are engaged in the manufacture of men's shirts and the sale thereof to wholesale and retail dealers located in various States of the United States. They cause said shirts when so sold to be transported from their said principal place of business in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with

other individuals, partnerships, and corporations similarly engaged in the manufacture and/or sale of men's shirts in interstate commerce and with the trade generally.

PAR. 2. For more than three years last past there has been imported into the United States a certain cotton fabric manufactured in England, called and sold under the name of, "English Broadcloth." During said time manufacturers of men's shirts located in the United States have manufactured shirts from said material and sold the same to wholesale and retail dealers, and through them eventually to the purchasing public, under the name, and as being made of, said English Broadcloth. Because of said material from which they are made, said shirts have acquired a wide popularity amongst the public throughout the United States and a great demand for said shirts has existed amongst the public during aforesaid period of time and still exists.

PAR. 3. For more than a year last past respondents have manufactured and sold to wholesale and retail dealers in the course of their business described in paragraph 1 hereof, shirts made from materials manufactured in the United States, to which said shirts and upon the containers in which they are packed, respondents have caused to be affixed labels bearing the words "English Broadcloth" and representing said shirts to be made of that material. In their price lists, catalogues and other trade literature respondents similarly list and describe said shirts as being made of English Broadcloth. The use by respondents of said labels and said designations appearing in said trade literature as above set out, has the capacity and tendency to mislead and deceive the trade and the public into the erroneous belief that said shirts are manufactured of the aforesaid English Broadcloth imported from England, and to cause the trade and public to purchase said shirts in that belief.

PAR. 4. Many of respondents' competitors referred to in paragraph 1 hereof, sell and distribute throughout the United States shirts made from said English Broadcloth imported from England and advertised, branded and labelled as such.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 14th day of September, 1923, issued and served its complaint upon the respondents, Samuel Katz and Samuel Davidson, charging them with unfair competition in violation of Section 5 of said Act. The respondents having entered their appearance and filed their answer and an agreed statement as to the facts having been made and filed in which it is stipulated that the facts therein recited may be taken in lieu of the testimony in this proceeding, and that upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and conclusions, and enter its order disposing of the proceeding.

Thereupon, this proceeding came on for final hearing without oral argument and the Commission having duly considered the record and having now been fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Samuel Katz and Samuel Davidson, are partners doing business under the trade name and style of Katz & Davidson with their principal place of business in the City and State of New York. They are engaged in the manufacture of men's shirts and the sale thereof to wholesale and retail dealers located in various States of the United States. They cause said shirts when so sold to be transported from their said principal place of business in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture and sale of men's shirts in interstate commerce.

PAR. 2. During the year 1919 certain American importers learned of a cotton fabric then being manufactured in England, which, by reason of its construction and the quality of the yarn used, possessed a distinctive appearance and was, in fact, a new species of cotton cloth. This cloth was made from the finest grade of Egyptian long staple cotton yarn, the counts running from 156 by 84 to 144 by 76, two-ply, both ways, 100 yarn, gassed and highly mercerized. This fabric possessed a fine, silken sheen, great durability, and resembled

a fabric made of silk so closely that it was named by the English mills and dealers, "taffeta poplin."

PAR. 3. This new fabric the American importers bought, shipped over to the United States, and introduced the same to the manufacturers of shirts, who at once designated it as a "broadcloth," on account of the resemblance of this very superior cotton to a silk fabric which for a generation or more has been made in America and known as a "silk broadcloth."

PAR. 4. This new fabric became known in the United States as "English Broadcloth." From the start it became very popular, the demand exceeded the supply, and between the latter part of 1919 and the fore part of January, 1921, a very high reputation was established for this cloth among the retail dealers in shirts throughout the States of the United States, and with the consumers, and "English Broadcloth" shirts came into great demand; and thereafter, about the middle of the year 1921, there appeared upon the market fabrics of similar appearance, but of inferior yarn, inferior workmanship, and of less durability than the fabric described above. These fabrics were in various grades and were made by both English and American mills. These fabrics were bought by American shirt manufacturers and were by some of them sold to retailers as "English Broadcloth," and often labeled "English Broadcloth," without regard to whether the cloth of which the shirts were made was imported from England or not.

PAR. 5. The word "broadcloth" is not, in England, applied to any cotton fabric, but for centuries has been applied to a very fine woolen fabric of unusual width, from which men's dress suits and women's skirts and tailored suits are made, and in the United States, the word "broadcloth" is also used to designate the same woolen fabric. The words "silk broadcloth" were used in the shirt industry to designate a fine fabric made of silk, and from which shirts were made, and after the introduction from England, in 1919, of the fine cotton fabric described in paragraph 2, the American mills manufactured a similar cotton cloth which was known to the shirt manufacturers in the United States as "broadcloth." The American mills do not style or designate the cotton fabric produced by them "English Broadcloth."

PAR. 6. The respondents, Samuel Katz and Samuel Davidson, in the course and conduct of their business in interstate commerce for more than a year immediately prior to the issuance of the complaint herein, bought the cotton fabric termed "broadcloth" made by American mills, and manufactured same into shirts, to which shirts they affixed labels bearing the words "English Broadcloth" and sold

such shirts as English broadcloth shirts, in competition with many competitors who affixed the label "English Broadcloth" to shirts only when such shirts were made from the fabric referred to in paragraphs 2, 3, and 4 hereof as being imported from England.

PAR. 7. The word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings denotes to the purchaser that the fabric was made in England, is a product of English mills, and among a large proportion of the retailers and a substantial proportion of the consuming public of the United States the word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings, has acquired a reputation for excellence in quality and has a recognized value.

PAR. 8. The words "English Broadcloth," as applied to the cotton fabric described in paragraph 2 hereof, have not acquired a secondary meaning, but in the minds of the retailers and a substantial portion of the purchasing public are understood to signify and represent that the garment so labeled is made from a material which is made in and imported from England.

PAR. 9. The labels, "English Broadcloth," as used by the respondents, are literally false, the cloth of which the garments were made not being made in England and not being a product of English mills, and are calculated to, and, in fact, do deceive, not only the retailers, but a substantial portion of the purchasing public, into the belief that the shirts so labeled are made of material imported from England, this deception being due primarily to the words of the label.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto and the agreed statement as to the facts made and filed therein, in lieu of the testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved Sep-

tember 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Samuel Katz and Samuel Davidson, do cease and desist from—

Using the words "English Broadcloth" as a label or brand for shirts, or other garments, unless such garments be made from broadcloth made in and imported from England.

And it is further ordered, That the respondents, within 60 days after the date of the 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 hereinbefore set forth.

FEDERAL TRADE COMMISSION

v.

INTERSTATE FUEL COMPANY AND WHITE ASH COAL COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1074—July 8, 1924.

SYLLABUS.

Where coal mined at Mount Olive, Ill., and in a small district contiguous thereto had long been known to and designated by the trade and a substantial part of the consuming public as "Mount Olive Coal" and as such had been extensively advertised and sold and had become well and favorably known to a substantial part of the consuming public; and thereafter two corporations engaged in the purchase and sale of coal, sold coal not produced at Mount Olive nor in the aforesaid district, as "Guaranteed Mount Olive Coal," "Coal Mount Olive Grade," and "Mount Olive White Ash Coal," and so advertised the same in competition with the genuine and more expensive Mount Olive Coal; with the capacity and tendency to mislead and deceive purchasers in reference to the source thereof:

Held, That such misleading designation of product, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. O. R. Stites for the Commission.

Ropiequet & Ropiequet of St. Louis, Mo., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Interstate Fuel Company, a corporation, and White Ash Coal Company, a corporation, more particularly hereinafter described and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Interstate Fuel Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the city of St. Louis, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the pur-

chase and sale of coal in wholesale and retail quantities in interstate commerce. In the course and conduct of its said business, said respondent for the purpose and with the intent of filling orders, executing contracts and supplying its customers, purchases its said coal from a company or companies located in a State or States other than the State of Missouri and transports or causes said coal to be transported in interstate commerce from the point of purchase to purchasers residing in the State of Missouri and/or other States of the United States, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said coal purchased and sold by said respondent between and among various States of the United States. In the course and conduct of its said business, respondent continuously has been, and is now, in competition with other individuals, partnerships and corporations similarly engaged in the sale of coal in commerce among the States of the United States.

PAR. 2. Respondent, White Ash Coal Company, its corporate name having been previously changed from White Oak Fuel Company by amendment to charter, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the city of St. Louis, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of selling coal as a wholesale merchant or jobber among and between various States of the United States, and there is now, and was at all times hereinafter mentiontd, a constant current of trade and commerce in said coal sold by said respondent between and among various States of the United States. In the course and conduct of its said business, respondent continuously has been, and is now, in competition with other individuals, partnerships and corporations similarly engaged in the sale of coal in commerce among the States of the United States.

PAR. 3. Respondent, Interstate Fuel Company, trading as aforesaid, at all times hereinafter mentioned, has offered for sale and sold in interstate commerce its coal under the trade name or brand "Mt. Olive," "Mt. Olive Grade," and "Guaranteed Mt. Olive Coal," which said coal is sold by respondent in competition with coal mined at Mt. Olive, Ill., or the immediate coal district or section, including, in whole or in part, the counties of Macoupin and Madison, in said State, but not including that portion of the said Madison County wherein respondent's coal is mined, said coal known and understood by a substantial part of the purchasing public as "Mt. Olive coal"; that said coal sold by respondent has a lower market value than the

coal produced at the Mt. Olive mines, or the mines of said immediate district or section; that the sale by said respondent of its said coal as "Mt. Olive," "Mt. Olive Grade" and "Guaranteed Mt. Olive Coal," has the capacity and tendency to mislead and deceive the purchaser into the belief that said coal was, and is, the product of the Mt. Olive mines, when in truth and in fact said coal is not the product of the said Mt. Olive mines or the mines of said immediate district or section.

PAR. 4. Respondent, Interstate Fuel Company, as a means of inducing customers, prospective customers and the consuming public to purchase its coal, caused advertisements to be inserted in newspapers published in the city of St. Louis, State of Missouri, and circulated in commerce between and among the States of the United States, in which said advertisements and other advertising matter said respondent has published false and misleading statements or representations concerning its said coal, in which said advertisements and advertising matter its said coal was and is described as "Mt. Olive Grade" and "Guaranteed Mt. Olive Coal," when in truth and in fact said coal is not the product of said mines located at or near Mt. Olive, Ill., generally recognized and understood by a substantial part of the purchasing public as marketing its said coal under the trade name or brand "Mt. Olive."

PAR. 5. Respondent, White Ash Coal Company, trading as aforesaid, at all times hereinafter mentioned, has offered for sale and sold in interstate commerce, its coal under the trade name or brand "Mt. Olive" or "Mt. Olive White Ash," which said coal is sold by said respondent in competition with coal mined at Mt. Olive, Ill., or the immediate coal district or section, including, in whole or in part, the counties of Macoupin and Madison, in said State, but not including that portion of the said Madison County wherein respondent's coal is mined, known and understood by a substantial part of the purchasing public as Mt. Olive coal; that said coal sold by respondent has a lower market value than the coal produced at the Mt. Olive mines, or the mines of said immediate district or section; that the sale by said respondent of its said coal as "Mt. Olive" or "Mt. Olive White Ash" has the capacity and tendency to mislead and deceive the purchaser into the belief that said coal was and is the product of the Mt. Olive mines, when in truth and in fact said coal is not the product of said Mt. Olive mines or the mines of the said immediate district or section.

PAR. 6. Respondents, Interstate Fuel Company and White Ash Coal Company, trading as aforesaid, at all times hereinafter men-

tioned, severally and/or cooperating together each with the other, offered for sale, sold and advertised in interstate commerce their said coal under the trade name or brand "Mt. Olive," "Mt. Olive White Ash," "Mt. Olive Grade," and "Guaranteed Mt. Olive Coal," in competition with coal mined at Mt. Olive, Ill., or the immediate coal district or section, including, in whole or in part, the counties of Macoupin and Madison, in said State, but not including that portion of the said Madison County wherein respondents' coal is mined, the use by said respondents of said trade names or brands in the sale of their coal, has the capacity and tendency to mislead and deceive the purchaser into the belief that said coal was the product of the Mt. Olive mines, when in truth and in fact the said coal sold by said respondents is not the product of said Mt. Olive mines or the mines of said immediate district or section.

PAR. 7. The words "Mt. Olive" when used by respondents as their trade name or brand in the sale of their coal or the use of the words "Mt. Olive" in connection with or in any way descriptive of their said coal, have been and are understood by a substantial part of the purchasing public to mean coal mined at Mt. Olive, Ill., or the immediate coal district or section, including in whole or in part the counties of Macoupin and Madison, in said State, but not including the product of mines located at Edwardsville in the said Madison County, Ill. The use by respondents of the words "Mt. Olive" or "Mt. Olive White Ash" as their trade name or brand have the capacity and tendency to mislead and deceive the purchaser into the belief that said coal was and is the product of the Mt. Olive mines, when in truth and in fact said coal sold by said respondents is not the product of said mines or the mines of said immediate district or section.

PAR. 8. The above alleged acts and things done by respondents are all to the prejudice of the public, and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, Interstate Fuel Company and White Ash Coal Com-

pany, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent White Ash Coal Company having entered its appearance and filed its answer herein, evidence was thereupon introduced in support of the allegations of the complaint and on behalf of respondent White Ash Coal Company, before an examiner of the Federal Trade Commission. Thereupon, this proceeding came on for final hearing, and the Commission having duly considered the complaint, the answer thereto and the evidence adduced, and being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Interstate Fuel Company, is a corporation organized under the laws of Missouri, and had its principal office and place of business in St. Louis, Mo. It was incorporated in August, 1921, and from said date until March 3, 1923, when it ceased to do business, was engaged in purchasing and selling coal in interstate commerce. It solicited orders from customers in the city of St. Louis, Mo., and purchased coal to fill same from mines located at Edwardsville and Collinsville, in the State of Illinois, and caused the coal so purchased to be transported by motor truck direct from the aforesaid mines to its customers in St. Louis, Mo. In the course and conduct of its business respondent was, until March 3, 1923, in competition with other persons, partnerships and corporations engaged in the retail selling of coal in St. Louis, Mo., including those retail dealers selling coal which was produced at Mount Olive and Staunton, in the State of Illinois.

PAR. 2. Respondent White Ash Coal Company is a corporation organized and existing under the laws of Missouri, with its office and principal place of business in St. Louis, Mo. For a period of nine years last past it has been and still is engaged in the business of buying coal and reselling same to retail coal dealers and carlot consumers throughout the several States of the United States. It causes coal so sold to be transported from Edwardsville, in the State of Illinois, direct to the aforesaid purchasers. In the conduct of its business said respondent has been and still is in competition with other individuals, partnerships and corporations likewise engaged in business, including those dealers selling coal which was produced at Mount Olive and Staunton, in the State of Illinois.

PAR. 3. In the conduct of its business as aforementioned, respondent, Interstate Fuel Company, obtained its supply of coal from

mines located at Collinsville and Edwardsville, in the State of Illinois. It advertised in St. Louis newspapers and sold the coal so obtained under the trade name and brand "Guaranteed Mount Olive Coal" and "Coal Mount Olive Grade," in competition with coal mined at Mount Olive, Ill., or that immediate district known to the trade and purchasing public as the "Mount Olive District."

PAR. 4. Respondent White Ash Coal Company, in the conduct of its business, obtains its supply of coal from the aforementioned Madison County Mining Company, at the latter's mine located at Edwardsville, Ill. It has, from time to time since 1916, advertised and still advertises in St. Louis telephone directories, and has otherwise, by means of circulars sent by mail to prospective purchasers, offered for sale and offers for sale, and has sold and still sells, coal so obtained under the trade name or brand, "Mount Olive White Ash Coal." Some of the aforementioned advertisements and circulars have contained, in inconspicuous type, the statement, "Mined at Edwardsville, Illinois." Respondent White Ash Coal Company, in the conduct of its business as herein described has sold and sells its coal in competition with coal produced at Mount Olive and Staunton, in the State of Illinois.

PAR. 5. For more than forty years last past there has been produced and still is produced at Mount Olive, Ill., and in a small district contiguous to the said Mount Olive, including Staunton, in the State of Illinois, a coal having peculiar characteristics of fracture and composition which has become known to and designated by the trade and a substantial part of the consuming public as "Mount Olive Coal." Throughout the period aforementioned, coal produced at mines located in the said district has been extensively advertised and sold and is still advertised and sold as "Mount Olive Coal." The coal from the aforementioned mines has become well and favorably known to a substantial part of the consuming public because of the aforesaid advertising and sales and because of its high quality and the degree of care exercised by its producers in eliminating impurities therefrom. "Mount Olive Coal" has a higher market value than coal produced at Edwardsville, in the State of Illinois.

PAR. 6. Coal mined at Edwardsville, and Collinsville, Ill., has never been designated as, or understood to be, "Mount Olive Coal," by the trade, or by a substantial part of the purchasing public. Coal produced at Edwardsville and Collinsville is generally regarded by the trade and purchasing public as inferior in quality to the aforesaid Mount Olive Coal.

PAR. 7. The words "Mount Olive" as used by respondents as descriptive of the coal sold by them, as hereinbefore set out, have the capacity and tendency to mislead and deceive purchasers into the belief that the coal so advertised and sold is the product of mines at Mount Olive and Staunton, when, in truth, the coal advertised and sold by the respondents is not the product of the Mount Olive and Staunton mines.

CONCLUSION.

The acts and practices of the respondents as hereinabove set forth and under the conditions and circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent White Ash Coal Company, and the testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the Act of Congress Approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Interstate Fuel Company, a corporation organized under the laws of Missouri, its agents, servants, representatives and employes, and the respondent White Ash Coal Company, a corporation organized and existing under and by virtue of the laws of Missouri, its agents, servants, representatives and employes, cease and desist from—

Making use of, by advertisement or otherwise, the words "Mount Olive," alone or in combination with other words in any way whatsoever, in connection with the sale or offering for sale of coal in commerce, unless the said coal is produced at mines located at Mount Olive, Ill., or within a small district contiguous thereto, including Staunton, in the aforesaid State.

ORDERS OF DISMISSAL.

CONSOLIDATED WOOLEN MILLS CO., November 8, 1923 (Docket 1003).

Charge: Adopting and using misleading corporate name, and advertising falsely and misleadingly; in connection with the manufacture and sale of knitted underwear, sweaters, hosiery, etc., and sale of blankets, overcoats, etc.

Dismissed, after answer and trial, Commissioner Nugent dissenting, for the reason that respondent "Consolidated Woolen Mills Co., has amended its articles of incorporation so as to change its name to 'Consolidated Knitting Mills Co.'"

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Mr. H. A. Rich* of Rich & Roberts, Salt Lake City, Utah, for respondent.

C. H. KRONEBERGER & Co., November 13, 1923 (Docket 508).

Charge: Tying and exclusive contracts or dealings in violation of Section 5 of the Federal Trade Commission Act; in connection with the sale of coffee.

Dismissed by the following order:

"Whereas, an order to cease and desist was heretofore, to-wit, on the 26th day of May, 1920, entered by the Federal Trade Commission in the above-entitled case, [see 2 F. T. C. 399] and

"Whereas, the Federal Trade Commission has reconsidered its report containing its findings as to the facts and its conclusions in said case, and the Commission being fully advised in the premises,

"Now, therefore, it is ordered, that the order to cease and desist entered in the above-entitled proceedings on the 26th day of May, A. D., 1920, be, and the same is hereby, rescinded and vacated, and the complaint dismissed."

Appearances: *Mr. Gaylord R. Hawkins* for the Commission; *Mr. Henry Zoller, Jr.* of Baltimore, Md., for respondent.

THE JOHN H. WILKINS CO., INC., November 13, 1923 (Docket 509).

Charge: Tying and exclusive contracts or dealings in violation of Section 5 of the Federal Trade Commission Act; in connection with the sale of coffee.

Dismissed by an order identical with that entered in the Kroneberger case, immediately above. [See 2 F. T. C. 403]

Appearances: *Mr. Gaylord R. Hawkins* for the Commission; *Mr. Frank J. Hogan* of Washington, D. C., for respondent.

THE LEVERING COFFEE CO., November 13, 1923 (Docket 510).

Charge: Tying and exclusive contracts or dealings in violation of Section 5 of the Federal Trade Commission Act; in connection with the sale of coffee.

Dismissed by an order identical with that entered in the Kroneberger case, immediately above but one. [See 2 F. T. C. 407]

Appearances: *Mr. Gaylord R. Hawkins* for the Commission.

ABRAHAM COHEN, DOING BUSINESS AS PURITAN PRODUCTS CO., INC., November 26, 1923 (Docket 979).

Charge: Simulation of trade name, labels and containers of a competitor; in connection with the manufacture and sale of a salad and cooking oil.

Dismissed by the following order:

Dismissed without prejudice for the reason that respondent "has discontinued business, and that his whereabouts, after diligent effort to ascertain same, can not be discovered."

Appearances: *Mr. Alfred M. Craven* for the Commission.

PENNSYLVANIA, NEW JERSEY & DELAWARE WHOLESALE GROCERS' ASSOCIATION, ITS OFFICERS, MEMBERS OF EXECUTIVE COMMITTEE AND MEMBERS, December 3, 1923 (Docket, 951).

Charge: Combining and conspiring; in connection with the purchase and sale of groceries, soap, soap products, and cooking fats.

Dismissed, after answer and trial, Commissioner Nugent dissenting, without assignment of reasons.

Appearances: *Mr. Charles Melvin Neff* for the Commission; *Mr. John A. Keppelman* of Reading, Pa., for respondent.

NATIONAL LEAD COMPANY, December 21, 1923. (Docket 900.)

Charge: Resale price maintenance; in connection with the manufacture and sale of white lead, red lead, litharge and other products used in the painting trade.

Dismissed, after answer and trial, without prejudice or assignment of reasons, Commissioner Nugent dissenting.

Appearances: *Mr. Robt. O. Brownell* for the Commission; *Mr. Charles W. Pierson* and *Mr. L. A. Doherty* of the firm of Alexander & Green of New York, N. Y., for respondent.

ROYAL DUTCH COMPANY OF TEXAS, January 5, 1924 (Docket 999).

Charge: Simulating firm or business name of competitor; in connection with the sale of oil stock.

Dismissed, after answer, without prejudice or assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission.

MADEIRA, HILL & CO. ET AL., January 31, 1924. (Docket 1077.)

Charge: Combining and conspiring to enhance prices; in connection with the mining and sale of anthracite coal.

Dismissed, after answer and trial, without assignment of reasons. Commissioner Murdock dissenting, Commissioner Thompson not present at the hearing and taking no part in regard to the findings or order.

Appearances: *Mr. Claude R. Porter* for the Commission; *Stetson, Jenning, Russell & Davis* of New York City for Madeira, Hill & Co.; *Mr. Preston Davie* of New York City for Pattison & Bowns, Inc.; *Curtis Fosdick & Belknap* of New York City for Titan Fuel Corporation; and *Mr. Thomas Gregory* of New York City for Clement P. Brodhead, doing business as C. P. Brodhead Coal Co.[1]

VAN CAMP PACKING CO. AND VAN CAMP PRODUCTS CO., February 8, 1924. (Docket 446.)

Charge: Guaranteeing against price decline; in connection with the manufacture, sale and distribution of food products.

Dismissed by the following order:

This proceeding having been consolidated, by the Order of this Commission, made and entered on the 29th day of January, 1920, with the proceeding by this Commission against Helvetia Milk Condensing Company, et al. (Docket No. 227), having been dismissed, without prejudice, by the order of this Commission, made and entered on the 15th day of May, 1923 [see 6 F. T. C. 148];

Now therefore, it is ordered, that this proceeding be, and the same is hereby, dismissed, without prejudice, Commissioner Nugent dissenting.

Appearances: *Mr. Edward L. Smith* for the Commission; *Smith, Remster, Hornbrook & Smith* of Indianapolis, Ind., for respondents.

E. W. LYNCH DOING BUSINESS UNDER THE NAME AND STYLE PURE SILK HOSIERY CO., February 15, 1924. (Docket 1058.)

Charge: Adopting and using misleading business or trade name and misrepresenting business status; in connection with the sale of hosiery.

Dismissed, without prejudice, for the reason that respondent cannot be located.

Appearances: *Mr. E. J. Hornibrook* for the Commission.

---

[1] Others joined as respondents in this case were: Hartwell-Lester, Inc., and Lynn M. Ranger.

PATENT VULCANITE ROOFING CO. February 29, 1924. (Docket 486.)

Charge: Misrepresenting product, misbranding or mislabeling, and advertising falsely and misleadingly; in connection with the manufacture and sale of a composition felt-base roofing material.

Dismissed, after answer, "on the ground that the respondent herein has been dissolved prior to April 1921, subsequent to the date of issue of the complaint herein."

Appearances: *Mr. John R. Dowlan* for the Commission; *Mr. Edwin P. Grosvenor* of Cadwalader, Wickersham & Taft, New York City, for respondent.

THE AMERICAN CAN CO., April 29, 1924. (Docket 123.)

Charge: Discriminating in price, tying or exclusive contracts or dealings (in violation of Sections 2 and 3, respectively, of the Clayton Act), and using long term contracts to stifle and suppress competition; in connection with the manufacture and sale of tin cans, canning machinery and canning accessories.

Dismissed, after answer, stipulation and trial, without assignment of reasons.

Appearances: *Mr. E. C. Alvord* and *Mr. G. Ed. Rowland* for the Commission; *Mr. L. A. Welles* and *Mr. P. G. Bartlett* of New York City and *Mr. Wade Ellis* of Washington, D. C., for respondent.

THE AMERICAN TOBACCO CO. OF THE PACIFIC COAST, AND THE WHOLESALE TOBACCO DEALERS OF PHOENIX, ARIZONA, Docket 1029; LIGGETT & MYERS TOBACCO CO., AND THE WHOLESALE TOBACCO DEALERS OF PHOENIX, ARIZONA, Docket 1030; P. LORILLARD CO., AND WHOLESALE TOBACCO DEALERS OF PHOENIX, ARIZONA, Docket 1031; May 21, 1924.

Charge: Agreeing, combining, and conspiring to fix and maintain resale prices; in connection with the sale of cigars, cigarettes and other tobacco products.

Dismissed, after answer and trial, without prejudice or assignment of reasons.

Appearances: *Mr. Robt. N. McMillen* for the Commission; *Mr. John Walsh* of Washington, D. C. and *Mr. Junius Parker* of New York City, for The American Tobacco Co., Inc. and The American Tobacco Co. of the Pacific Coast, Inc.; *Mr. F. L. Fuller* of New York City and *Mr. Hiram W. Johnson, Jr.* of San Francisco, Calif., for Liggett & Myers Tobacco Co., Inc.; *Mr. W. B. Bell* of New York City and *Mr. H. H. Shelton* of Washington, D. C., for P. Lorillard Co., Inc.; *Mr. Leon S. Jacobs* of Phoenix, Ariz., for Baswitz Cigar Co., Inc. and The Melczer Co., Inc.; *Britton & Gray* of Washington, D. C. and *Lawler & Degnan* of Los Angeles, Calif. for Haas, Baruch & Co., Inc.

THE OHIO WHOLESALE GROCERS' ASSOCIATION CO., ET AL., Docket 957, May 28, 1924.

Charge: Combining or conspiring to coerce respondent's vendor manufacturers to guarantee against price decline the products bought of them by respondent members; in connection with the purchase and sale of groceries, food and tobacco products.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Walter B. Wooden* and *Mr. E. R. Blake* for the Commission; *Mr. George H. Silverman* of Cincinnati, Ohio, for respondent Daniel Keilson; and *Mr. Frank M. Raymund* of Columbus, Ohio, and *Mr. Andrew Wilson* of Washington, D. C., for Ohio Wholesale Grocers' Association and other respondents.

ONEPIECE BIFOCAL LENS CO., June 3, 1924. (Docket 591.)

Charge: Maintaining resale prices, and tying or exclusive contracts or dealings in violation of Section 3 of the Clayton Act; in connection with the manufacture and sale of onepiece bifocal lenses for optical purposes.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. M. B. Clarke* and *Mr. J. T. Clark* for the Commission; *Mr. Virgil H. Lockwood* of Lockwood & Lockwood of Indianapolis, Ind., and *Mr. Melville Church* of Washington, D. C., for respondent.

TOBACCO PRODUCTS CORPORATION, INC.; FALK TOBACCO CO., INC.; THE CINCINNATI WHOLESALE TOBACCO ASSOCIATION, its officers and members, June 10, 1924. (Docket 908.)

Charge: Combining or conspiring to fix and maintain uniform resale prices; in connection with the sale of cigars, cigarettes and other tobacco products.

Appearances: *Mr. Edward L. Smith* and *Mr. Edwin B. Haas* for the Commission; *Mr. Wm. A. Ferguson* of New York City and *Mr. H. H. Shelton* of Washington, D. C., for Tobacco Products Corporation and Falk Tobacco Co., Inc.; *Mr. Clarence Dorger* of Dorger & Dorger of Cincinnati, Ohio, for Janszen Grocery Co.; *Mr. Alfred G. Allen* of Cincinnati, Ohio, and *Mr. Charles S. Moore* of Washington, D. C., for The Cincinnati Wholesale Tobacco Association, its officers and members.

Dismissed, after answer, stipulation and trial, without prejudice or assignment of reasons, by the following order:

"Whereas, in each of four Complaints issued by this Commission and known respectively as Dockets Nos. 906, 907, 908 and 909, The Cincinnati Wholesale Tobacco Association, its officers and members are charged with the use of, among others, a certain unfair method of competition in interstate commerce, in that the said association,

its officers and members by agreement among one another fixed and maintained uniform resale prices for cigarettes and other tobacco products; and whereas heretofore, to wit, on February 29, 1924, this Commission made its findings as to the facts in Docket No. 909 aforesaid and on the same day served upon the said association, its officers and members an order requiring such association, its officers and members to cease and desist from using said unfair method of competition;[1] and whereas this Commission has not as yet held final hearing of either of the proceedings known as Dockets Nos. 906 and 907; and whereas, this Commission has duly considered the testimony and evidence and the argument of counsel in this proceeding, Docket No. 908;

"*It is hereby ordered*, That the complaint in this proceeding, Docket No. 908, be and the same is hereby dismissed, without prejudice, however, to such findings as to the facts and to such orders to cease and desist as may be made by the said Commission in said proceedings, Dockets Nos. 906, and 907, or either of them, and without prejudice to the findings as to the facts and to the order to cease and desist made by this Commission against the said Cincinnati Wholesale Tobacco Association, its officers and members in the said proceeding, Docket No. 909, aforesaid.

"By the Commission, Commissioner Thompson dissenting in attached memorandum."

Dissent by Commissioner Thompson.

It is with regret that I find myself unable to agree with my associates in the dismissal, as to the Falk Tobacco Company, of the complaint in the above entitled case.

Broadly speaking, the complaint charges the Cincinnati Tobacco Jobbers Association, its officers and members, *first*, with a price fixing combination, agreement and understanding among themselves, and *second*, with a price fixing combination agreement and understanding with the Falk Tobacco Company, a subsidiary of The Tobacco Products Corporation, which is also named as respondent.

As to the first of the above mentioned charges, the association, its officers and members, have been ordered in another proceeding, namely, Docket 909, to desist from such practice. As I understand it, the dismissal of my associates of the first charge is not due to the fact that there was not sufficient proof to support an appropriate order to cease and desist against the Jobbers Association on the charge of price fixing and combination in restraint of trade, but was because the order issued in Docket 909, covered this feature and it

[1] Reported in 7 F. T. C. 351.

would have been simply a repetition to repeat the order in the present case.

As to the second charge, however, since I am of the opinion that the Falk Tobacco Company conspired with the association to assist it in maintaining its price fixing combination, the order to cease from these practices should be repeated in the present case.

The action of the Falk Tobacco Company, and its relationship to the Tobacco Association is laid bare in correspondence between witness Bales, a division manager of the Falk Tobacco Company, and the officers of the said company (Exhibits 46, 47, 52, 57 and 58).[1] The Falk Company's methods involved a request on its part to its salesmen to keep the company posted as to price-cutters; cutting off of price-cutters from the Tobacco Company's direct list; the refusal to put price-cutters on its direct list; the request by the Falk Company (Exhibits 147, 148)[1] that its division manager, Bales, learn whether the association had any objection to the Falk Company's putting certain jobbers and in particular a former price-cutter by the name of Fennell, whose record was familiar to the company, on its price-list; the failure to put Fennell on its price-list until he had become a member of the association, and until the Falk Company had secured the consent of the association that he be put on said price-list.

The relationship of the Falk Tobacco Company in supporting the association's price-fixing practices is also demonstrated (Exhibits 41, 42, 43 and 44)[1] in the case of Lewis Brothers of Cincinnati, who had applied to be put on the direct list of the Falk Tobacco Company, and were refused that privilege solely because Lewis Brothers had sought to induce some of the jobbers of that community not to join the respondent association.

Summarizing, the evidence shows, *first*, that the association was a price fixing combination; *second*, that the Falk Tobacco Company did not put on its direct list jobbers outside the association, unless they were approved by the association or became members of the association; *third*, that the Falk Tobacco Company refused to sell those who did not maintain prices as required by the association.

The Falk Tobacco Company has urged that because, for four and one-half years after May, 1918, it added only five jobbers to its direct list, and that because only one, the said Fennell, was added during the year 1921, it resale price maintenance system, it it had any, was not extensive. This state of facts, in my opinion, shows on the contrary the high degree in which the resale price maintenance system of the company was perfected.

[1] Not published.

The cooperation of the Falk Tobacco Company with the Jobbers Association is, in my opinion, so clear from the evidence that I am compelled to dissent from the view taken by my associates that there was lack of evidence in this case of conspiracy between the Falk Tobacco Company and the association.

I am, therefore, of the opinion that an order should issue against the Cincinnati Tobacco Jobbers Association, its officers and members, and against the Falk Tobacco Company requiring them to cease and desist from the practices set forth in the complaint.

T. S. SOUTHGATE, TRADING UNDER THE NAME AND STYLE OF T. S. SOUTHGATE & CO., AND LEXINGTON GROCERY CO. AND TAYLOR BROS. & COMPANY INC., TRADING UNDER THE NAME AND STYLE OF SOUTHERN SALT CO., June 25, 1924. (Docket 935.)

Charge: Advertising falsely and misleadingly, misrepresenting products, and misbranding or mislabeling; in connection with the purchase and sale of salt.

Dismissed, after answer and stipulation, without prejudice or assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission.

BOWERS BROTHERS, INC., ET AL., June 25, 1924. (Docket 993.)

Charge: Cooperating to maintain and enforce resale price maintenance and to eliminate price competition; in connection with the sale of coffee.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Richard P. Whiteley* for the Commission; *Mr. R. E. Cabell* of Cabell & Cabell of Richmond, Va. for Bowers Brothers, Inc. and *Mr. Stephen Nettles* of Greenville, South Carolina, for other respondents.

THE CHARLES H. ELLIOTT CO., July 1, 1924. (Docket 1000.)

Charge: Commercial bribery; in connection with the manufacture and sale of jewelry, stationery, printing and engraving products suitable for use by high schools, colleges, universities, etc.

Dismissed, after answer and trial, without prejudice or assignment of reasons.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Edw. Hopkinson, Jr.* of Dickson, Beitler & McCouch of Philadelphia, Pa., for respondent.

CANADA DRY GINGER ALE, INC., ET AL, July 1, 1924. (Docket 1007.)

Charge: Misbranding; in connection with the manufacture and sale of ginger ale.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. E. J. Hornibrook* and *Mr. H. A. Babcock* for the Commission; *Mr. Eugene Congleton* of Rounds, Hatch, Dillingham & Debevoise of New York City and *Mr. Daniel R. Forbes* of Washington, D. C., for respondents.

F. M. STAMPER Co., July 1, 1924. (Docket 1040.)

Charge: Cutting off competitors' supplies; in connection with the purchase and sale of produce, including poultry, eggs and cream.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. M. Markham Flannery* for the Commission; *Hunter & Chamier* of Moberly, Mo., for respondent.

THE STANDARD REGISTER Co., July 3, 1924. (Docket 1019.)

Charge: Disparaging a competitor and its products, intimidating customers of a competitor, and instituting and threatening to institute, suits, not in good faith; in connection with the manufacture and sale of manifolding or autographic registers and the supplies therefor.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. W. B. Turner* of E. H. & W. B. Turner of Dayton, Ohio and *Mr. Alfred M. Allen* of Allen & Allen of Cincinnati, Ohio, for respondent.

ADOLPHE SCHWOB, INC., July 11, 1924. (Docket 801.)

Charge: Adopting and using misleading course of conduct in connection with the purchase and sale of imported watch movements.

Dismissed, after answer and trial, without assignment of reasons. Commissioner Nugent dissents.

Appearances: *Mr. Thomas H. Baker, jr.*, for the Commission; *H. A. & C. E. Heydt*, of New York City, for respondent.

THE AMERICAN TOBACCO Co., INC., AND THE CINCINNATI WHOLESALE TOBACCO ASSN., ET AL. (Docket 906.) LIGGETT & MYERS TOBACCO Co., INC., AND THE CINCINNATI WHOLESALE TOBACCO ASSN., ET AL. (Docket 907.) July 18, 1924.

Charge: Combining or conspiring to fix and maintain uniform resale prices; in connection with the sale of cigars, cigarettes, and other tobacco products.

Dismissed, after answer, stipulation and trial, without prejudice and assignment of reasons, Commissioner Thompson dissenting, by the following order:

Whereas, in the complaint issued by this Commission in this proceeding and in the complaint issued by this Commission in another proceeding known as Docket No. 909, The Cincinnati Wholesale

Tobacco Association, its officers and members, are charged with the use, among others, of a certain unfair method of competition in interstate commerce in that the said association, its officers and members by agreement among one another fixed and maintained uniform re-sale prices for cigarettes and other tobacco products; and whereas heretofore, to-wit, on February 29, 1924, this Commission made its findings as to the facts in Docket No. 909 aforesaid and on the same day served upon the said association, its officers and members an order requiring the said association, its officers and members to cease and desist from using said unfair method of competition;[1] and whereas this Commission has duly considered the testimony and evidence and the argument of counsel in this proceeding, Docket No. 906. [907 in the other case.]

It is hereby ordered, That the Complaint in this proceeding, Docket No. 906 [907 in the other case], be and the same is hereby dismissed without prejudice, however, to the findings as to the facts and to the order to cease and desist made by this Commission against the said Cincinnati Wholesale Tobacco Association, its officers and members in the said proceeding, Docket No. 909 aforesaid.

By the Commission, Commissioner Thompson dissenting.

Appearances: *Mr. Robt. N. McMillen* for the Commission; *Mr. John Walsh* of Washington D. C., and *Mr. Junius Parker*, of New York City, for American Tobacco Co., Inc.; *Mr. Clarence Dorger*, of Dorger & Dorger, of Cincinnati, Ohio, for Janszen Grocery Co.; *Mr. Alfred G. Allen*, of Cincinnati, Ohio, and *Mr. Charles S. Moore*, of Washington, D. C., for the Cincinnati Wholesale Tobacco Association, its officers and members; and *Dunnington, Walker & Gregg* and *Mr. F. L. Fuller*, of New York City, for Liggett & Myers Tobacco Co., Inc.

SCOTCH WOOLEN MILLS, July 18, 1924. (Docket 940.)

Charge: Assuming misleading firm or business name, and advertising falsely and misleadingly; in connection with the manufacture and sale of men's clothing.

Dismissed, after answer, stipulation and trial, without assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Mr. Isaac S. Rothschild* and *Mr. Arthur B. Schaffner*, of Chicago, Ill., and *Covington, Burling & Rublee*, of Washington, D. C., for respondent.

[1] Reported in 7 F. T. C. 351.

APPENDIX I.

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS.

FEDERAL TRADE COMMISSION ACT.[1]

[Approved Sept. 26, 1914.]

[PUBLIC—No. 203—63D CONGRESS.]

[H. R. 15613.]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

SEC. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Reported decisions of the courts for the period covered by this volume (Nov. 5, 1923, to July 20, 1924) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 589 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II–VI, inclusive, of the Commission's Reports.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Term, seven years.

each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Chairman to be chosen by commission.

Pursuit other business prohibited.

Removal by President.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.

Commissioner's salary, $10,000.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

---

duties, and for other purposes,' approved Sept. 26, 1916, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall reques of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962–1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerece on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840–8849; 9068; 14925–14933 (part 15); Dickinson for, part 9, pp. 9189–9190; Mann against, part 15, pp. 14939–14940; Morgan, part 9, 8854–8857, 9063–9064, 14941–14943 (part 15); Sims for, 14940–14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849–8853 (part 9); 14933–14939 (part 15); and of Senators Borah against, 11186–11189 (part 11); 11232–11237, 11298–11302, 11600–11601 (part 12); Brandegee against, 12217–12218, 12220–12222, 12261–12262, 12410–12411, 12792–12804 (part 13), 13103–13105, 13299–13301; Clapp against, 11872–11873 (part 12), 13061–13065 (part 13), 13143–13146; 13301–13302; Cummins for, 11102–11106 (part 11), 11379–11389, 11447–11458 (part 12), 11528–11539,

commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, $5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

12873–12875 (part 13), 12912–12924, 12987–12992, 13045–13052, 14768–14770 (part 15); Hollis for, 11177–11180 (part 11), 12141–12149 (part 12), 12151–12152; Kenyon for, 13155–13160 (part 13); Lewis for, 11302–11307 (part 11), 12924–12933 (part 13); Lippit against, 11111–11112 (part 11), 13210–13219 (part 13); Newlands for, 9930 (part 10), 10378–10378 (part 11), 11081–11101, 11106–11116, 11594–11597 (part 12); Pomerene for, 12870–12873 (part 13), 12993–12996, 13102–13103; Reed against, 11112–11116 (part 11), 11874–11876 (part 12), 12022–12029, 12150–12151, 12530–12551 (part 13), 12933–12930, 13224–13234, 14787–14791 (part 15); Robinson for, 11107 (part 11), 11228–11232; Saulsbury for, 11185, 11591–11594 (part 2); Shields against, 13056–13061 (part 13), 13146–13148; Sutherland against, 11601–11604 (part 12), 12805–12817 (part 13), 12855–12862, 12980–12986, 13055–13056, 13109–13111; Thomas against, 11181–11185 (part 11), 11598–11600 (part 12), 12862–12869 (part 13), 12978–12980; Townsend against, 11870–11872 (part 12); and Walsh for, 13052–13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 429–442. (See case also in Vol. II of Commission's Decisions, p. 504 at pp. 570–579.)

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States.

Sec. 4.—DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to cary on business for its own profit or that of its members. "Corporation."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act. "Documentary evidence."

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. "Acts to regulate commerce."

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;[2] also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen. "Antitrust acts."

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.[3]

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Commission to prevent. Banks and common carriers excepted.

[2] For text of Sherman Act, see footnote on pp. 564–565.

[3] Jurisdiction of Commision under this section limited by sec. 406 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See second paragraph of footnote on p. 549.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Commission to issue complaint when unfair method used and to public interest.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same

Liability under antitrust acts not affected.

shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.[3]

Service of Commission's complaints, orders, and other processes.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering

Personal; or

a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the cor-

At office or place of business; or

poration to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person,

By registered mail.

partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or

Verified return by person serving, and return post-office receipt, proof of service.

place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. FURTHER POWERS.[4]

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

---

[3] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in last paragraph of sec. 4 of this act, see p. 553.

[4] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

To require annual or special reports from corporations, except banks and common carriers.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,[5] to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To transmit findings and recommendations to Attorney General.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts[5] by any corporation.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts[5] in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To make public, as it deems expedient, portions of information obtained.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

[5] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in last paragraph of sec. 4, of this act, see p. 553.

Sec. 6. FURTHER POWERS—Continued.

To make reports to Congress, together with recommendations for new legislation. To provide for publication of its reports and decisions.

in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To classify corporations, and make rules and regulations incidental to administration of Act.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,[6] the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.[7]

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

[6] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in last paragraph of sec. 4 of this act, see p. 553.

[7] Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.[78]

Commission to have access to documentary evidence and right to copy same.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

May require attendance of witnesses and production of evidence.

Subpœnas, oaths, affirmations, examination of witnesses. Reception of evidence.

Witnesses and evidence may be required from any place in United States.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Disobedience to a subpœna. Commission may invoke aid of any United States court.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Disobedience thereafter punishable as contempt.

Mandamus from District Courts on application of Attorney General to enforce compliance with Act.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Commission may order depositions at any stage.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

[78] Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

gation. Such depositions may be taken before any person designated by the commission and having power to

Testimony to be reduced to writing, etc.

administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witness fees, same as paid for like services in United States courts.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpœna issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES.[a]

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

[a] Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

Failure of corporation to file required report.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000,

Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts[9] or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

THE CLAYTON ACT.[1]

[Approved Oct. 15, 1914.]

[PUBLIC—No. 212—63D CONGRESS.]

[H. R. 15657.]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Sec. 1. DEFINITIONS.

"Antitrust laws."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

---

[9] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in last paragraph of sec. 4 of this act, see p. 553.

[1] This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Subsequent reported decisions for the period covered by this and the preceding volumes (July 1, 1921, to July 20, 1924) and bearing on the provisions of this act affecting the Commission are: *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed. 571 (see opinion set forth in Appendix II of Volume IV at p. 542 et seq.); *Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of Volume IV at p. 552 et seq.); *Auto Acetylene Light Co.* v. *Prest-O-Lite Co., Inc.*, 276 Fed. 537; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360; *United Shoe Machinery Corporation* v. *United States*, 258 U. S. 451, 42 Sup. Ct. 363; *Aluminum Co. of America* v. *Federal Trade Commission*, 284 Fed. 401 (see opinion set forth in Appendix II of Volume V at p. 529 et seq.); *Standard Oil of N. J. et al.* v. *Federal Trade Commission*, 282 Fed. 81 (see opinion set forth in Appendix II of Volume V at p. 542 et seq.); *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568 (see opinion set forth in Appendix II of Volume V at p. 599 et seq.); *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774 (see opinion and decision set forth in Appendix II of Volume VI at p. 579 et seq.); *Federal Trade Commission* v. *Sinclair Refining Co. et al.*, 261 U. S. 463 (see opinion and decision set forth in Appendix II of Volume VI at p. 587 et seq.); *B. S. Pearsall Butter Co.*, 292 Fed. 720 (see opinion and decision set forth in Appendix II of Volume VI at p. 605 et seq.); *A. B. Dick Co.* v. *Fuller*, 6 F. (2d) 393; *National Biscuit Co. et al.* v. *Federal Trade Commission*,

July second, eighteen hundred and ninety[2]; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government,

---

299 Fed. 733 (see opinion and decision set forth in Appendix II of this volume at page 603 et seq.); and *Aluminum Co. of America* v. *Federal Trade Commission*, 299 Fed. 361 (see opinion and decision set forth in Appendix II of this volume at page 618 et seq.).

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess.) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 169, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

That Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *." (See also in this general connection the limitation imposed in connection with the appropriations for enforcing the Sherman Act as set forth in the following note.)

[2] The Sherman Act (26 Stat. 209), which, as a matter of convenience is printed herewith. While the Act itself has not been amended, appropriations for the Department of Justice for the enforcement of the anti-trust laws for the fiscal years 1920–1925, inclusive, (41 Stat. 208, 41 Stat. 922, 41 Stat. 1411, 42 Stat. 613, 42 Stat. 1080, and 43 Stat. 215, respectively), were made contingent upon no part of the moneys being—

"Spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate

Sec. 1. DEFINITIONS—Continued.

and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce." "Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

"Person or persons." The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of

---

and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products."

The act, omitting the usual formal *"Be it enacted,"* etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

ENFORCEMENT.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and

either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.[1]

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of com-

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

---

it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ADDITIONAL PARTIES.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

[1] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 563.

Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.[4]

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

May sue in any United States district court, and recover threefold damages, including cost of suit.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws[5] may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

[4] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 563.

[5] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in Clayton Act, see first paragraph thereof on p. 562.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.

Prima facie evidence against same defendant in private litigation.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust[6] laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Consent judgments or decrees excepted.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws[6] shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects

[6] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in Clayton Act, see first paragraph thereof on p. 562.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.

thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.[1]

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

---

[1] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 562.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 586, sec. 3.)

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Existing rights heretofore lawfully acquired not affected.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,[8] nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.[9]

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank

[8] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in Clayton Act, see first paragraph thereof on p. 562.

[9] By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any ' bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

Not to serve more than one bank, banking association, or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid

Savings banks without capital (share) stock excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

---

engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 563.

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker or any officer, director, or employee of any member bank or class A director of a Federal reserve bank, who shall first procure the consent of the Federal Reserve Board, which board is hereby authorized, at its discretion, to grant, withhold, or revoke such consent, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if such other bank, banking association, or trust company is not in substantial competition with such banker or member bank.

Class A director of Federal reserve bank excepted and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.[10]

Consent may be secured before applicant elected director.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.[11] The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than $1,000,000, and elimination of competition by agreement would violate antitrust laws.

How eligibility determined.

[10] The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, and act May 26, 1920, ch. 206.

[11] For text of Sherman Act, see footnote on pp. 564–565. As enumerated in Clayton Act, see first paragraph thereof on p. 562.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than $50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.[12]

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.[13]

Jurisdiction as respectively applicable vested in—

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so

[12] Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

[13] On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 563.

complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

Findings of commission or board conclusive if supported by testimony.

sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may

Commission or board may make new or modified findings by reason thereof.

seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original

Judgment and decree subject to review upon certiorari, but otherwise final.

order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A

To be served on commission or board which thereupon to certify and file transcript of record in the court.

copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

Jurisdiction of Court of Appeals exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.[14]

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by any one duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws[14] against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

[14] For text of Sherman Act, see footnote on pp. 564–565. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 562.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS—Continued.

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

nal, arising under the antitrust laws[15] may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws,[15] such violation shall de deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

A misdemeanor.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

[15] For text of Sherman Act, see footnote on pp. 564–565. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 562.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,[16] including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

[16] For text of Sherman Act, see footnote on pp. 564–565. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 562.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

jury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 266 not affected.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury their is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or comunicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Acts specified in this paragraph not to be considered violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court or, upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed $1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS.

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States.

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

But to be confined to clause, sentence, etc., directly involved.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

WEBB ACT.[1]

[Approved Apr. 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

AN ACT To promote export trade, and for other purposes.

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congres assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

"Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

"Association."

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

Association not illegal if organized for and engaged in export trade solely.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,[2] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in

[1] With the exception of a reference thereto in the case of *United States v. United States Steel Corporation*, 251 U. S. 417 at 453, and in *Ex Parte Lamar*, 274 Fed. 160 at 171, this act appears as yet neither to have been involved in nor referred to in any reported case.

[2] For text of Sherman Act, see footnote on pp. 564–565.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW—Continued.

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,[3] shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,[4] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in ex-

[3] See *ante*, p. 562 et seq.
[4] See *ante*, p. 549 et seq.

port trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United Sates.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION—Continued.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."[5]

Approved, April 10, 1918.

[5] See *ante*, p. 549 et seq.

DECISIONS OF THE COURTS IN CASES INSTITUTED AGAINST OR BY THE COMMISSION.[1]

FOX FILM CORPORATION *v.* FEDERAL TRADE COMMISSION.[2]

(Circuit Court of Appeals, Second Circuit. January 7, 1924.)

No. 121.

1. COMMERCE KEY NO. 40 (1)—MANUFACTURER OF MOVING-PICTURE FILMS HELD ENGAGED IN "INTERSTATE COMMERCE," WITHIN THE FEDERAL TRADE COMMISSION ACT.

Manufacturer of moving-picture films, which shipped the films to its agencies in several states to be sold and leased to owners and operators of moving-picture theaters throughout the United States, was engaged in "interstate commerce," within Act September 26, 1914 (Comp. St. secs. 8836a–8836k), empowering the Federal Trade Commission to prevent persons and corporations engaged in interstate commerce from using unfair methods of competition.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—FINDINGS THAT MOVING-PICTURE FILM PRODUCER USED UNFAIR METHODS IN CONNECTION WITH THREE PICTURES HELD TO SUPPORT ORDER TO DESIST.

Federal Trade Commission's findings that motion-picture film producer reissued three old pictures under new titles as new photo plays, and advertised such pictures as new pictures not previously exhibited, and induced the public to believe them to be new pictures, *held* to support order to desist from reissuing old pictures under new titles as new pictures, as unfair competition.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—ONE MAY BE ENGAGED IN "UNFAIR COMPETITION," WITHIN FEDERAL TRADE ACT, THOUGH GENERAL PRACTICE IS NOT UNFAIR.

Under Act September 26, 1914 (Comp. St. secs. 8836a–8836k), empowering the Federal Trade Commission to prevent persons and corporations engaged in interstate commerce from using unfair methods of competition, the general practice of the offender need not be unfair, since general practice may involve many methods, each conceived and to be applied for its particular desired result, but one act that constitutes an unfair practice may of itself be offensive to the act.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—MOTION-PICTURE PRODUCER'S REISSUANCE OF OLD FILMS UNDER NEW TITLES AS NEW PICTURES HELD "UNFAIR COMPETITION."

Issuance by producer of moving-picture films, engaged in competition with other corporations, persons, and partnerships similarly engaged, of old pictures under new titles as new pictures never before exhibited, *held* "unfair competition," within Federal Trade Act (Comp. St. Sections 8836a–8836k).

[1] The period covered coincides with that of this volume, namely, Nov. 5, 1923, to July 20, 1924.

[2] Reported in 296 Fed. 353.

5. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—CORPORATION'S ABANDONMENT OF UNFAIR METHODS DOES NOT DEPRIVE COMMISSION OF AUTHORITY TO COMMAND CORPORATION TO DESIST.

The mere fact that a corporation which has engaged in unfair methods of competition has discontinued such methods and promises to follow a different practice does not deprive the Federal Trade Commission of authority under the Federal Trade Act (Comp. St. secs. 8836a-8836k) to command the corporation to desist from using such methods.

6. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—EFFECT OF ORDER DIRECTING MOVING PICTURE FILM MANUFACTURER TO DESIST FROM REISSUING OLD PICTURES UNDER NEW TITLES STATED.

An order of the Federal Trade Commission commanding a manufacturer of moving-picture films to desist from reissuing old films under new titles, as new pictures, and from advertising such pictures as pictures which have never before been exhibited, does not prohibit the remaking of a photoplay in which an entirely new cast is used or an entirely new production is made or where the original title is used, or reference made thereto in the advertising of the picture.

(The syllabus is taken from 296 Fed. 353)

Petition to review the order of the Federal Trade Commission directing the petitioner to cease and desist from methods of unfair competition in trade.[1] This petition is by the Fox Film Corporation to revise such order. Order affirmed.

Saul E. Rogers, of New York City, for petitioner.

James M. Brinson, of Butte, Mont., for respondent.

Before Hough, Manton, and Mayer, Circuit Judges.

MANTON, *Circuit Judge:*

Under the authority of the Act of September 24, 1914 (38 Stat. L. 717; Comp. Stat. 8836-a), the respondent filed a complaint against the petitioner, alleging that it was engaged in the production of photoplays and leased and sold its products to the owners and operators of moving-picture theatres throughout the United States, granting the right to exhibit said photoplays to the public. It is admitted that the petitioner, in leasing and selling to the exhibitors, maintains agencies at various cities in the several states of the United States. It makes positive photoplays produced by it and packs the same in such manner as to be adapted for use in motion-picture projecting machines. These are called films, and the photoplays are known in the trade as releases. It ships to its agencies in several states from New York City. The petitioner is therefore engaged in interstate commerce. *Binderup* v. *Pathe Exchange* (Supreme Court, Nov. 19, 1923; 263 U. S. 291; 68 L. Ed. 114).

The parties stipulated the facts, and they had been embodied in the findings of the commission. It is stipulated that when a picture has

[1] 6 F. T. C. 191.

been run and generally exploited in the United States or in a considerable portion of it and it is again offered for exhibition at a later period it is commonly known as a reissue or revival. That, according to the accepted practice, usage, and custom of this industry, unless the original title of the picture is retained or the picture is so described in the contract between the producer and the exhibitor and in the advertising matter as a reissue or revival of a photoplay previously released, it is understood by the exhibitor and the public that the photoplay to be furnished or screened is or will be a new picture; that is to say, a continuity not previously exhibited or exploited throughout any considerable portion of the United States. On December 18, 1916, the petitioner released a motion picture which was entitled "The Love Thief," and on May 28, 1917, it released a motion picture which was entitled "The Silent Lie," and on September 17, 1917, it released a motion picture entitled "The Yankee Way." These pictures were extensively exploited and exhibited throughout the United States. They were known at the time as feature pictures, being ordinary five-reel pictures designed for the principal part of an ordinary motion-picture theater program. It is stipulated that in the course of the season of 1919–20 the petitioner reissued the old picture of "The Love Thief" as "The She Tiger"; reissued the old picture of "The Silent Lie" and entitled it "Camille of the Yukon"; and reissued the old picture of "The Yankee Way" and entitled it "Sink or Swim." It furnished each of these three pictures so retitled to exhibitors in various states of the United States in connection with leases providing for the petitioner's so-called program series of pictures. All other pictures furnished under such program contracts to exhibitors were new pictures.

The petitioner furnished the exhibitors with bill posters and other matter for use in advertising the photoplays to the public. In no way did the petitioner disclose that the pictures so furnished or any of them were reissues. The advertising matters furnished exhibitors by petitioner in connection with the picture "Sink or Swim" conspicuously displayed the legend "William Fox presents George Walsh in 'Sink or Swim'"; and in connection with "The She Tiger" it conspicuously displayed the legend "The She Tiger from the Famous Novel The Love Thief by N. P. Niessen." The advertising furnished exhibitors in connection with the picture "Camille of the Yukon" displayed the legend "Based on Larry Evans' Alaskan Novel 'The Silent Lie.'" Various exhibitors who received these three photoplays from the petitioner used this advertising matter to advertise the exhibition of the pictures without further disclosing to the public that they were old pictures. It was, in effect, stipulated that without further information from the petitioner or its agents that any or either of the pictures were reissues, the exhibitors believed them new pictures and advertised them for exhibition with the bills and posters supplied by the petitioner, and in some instances they received complaints from patrons of their theaters who claimed to have been misled into believing them new pictures. In effect, it was stipulated that in communities where pictures were received and advertised patrons attended the exhibition under the belief that they were new pictures.

The petitioner concedes that it is engaged in competition with other persons, partnerships, and corporations similarly engaged.

Through its agency, it enters into leases and contracts with exhibitors, agreeing to furnish the exhibitors over a fixed period, its current releases and grants the right to exhibitors to exhibit the same to the public for a stated number of performances. The president of the petitioner, in effect, testified that it has never been the general practice or policy of the petitioner to exploit, sell or lease old pictures under new names or to reissue pictures under any names other than those of their original release. That the practice or policy of reissuing of old pictures under new names is obnoxious to him and to the motion-picture industry "and indefensible from any ethical or business standpoint; that of the multitude of motion pictures or photoplays produced by respondent, he knows of no instance except those involved in this proceeding, in which respondent has reissued any old pictures under new names; that with respect to the above pictures, there was no attempt to mislead the exhibitors, or the public that said pictures were not reissues." The order to cease and desist provides—

"That the respondent, Fox Film Corporation, its agents, servants and employees, cease and desist from directly or indirectly advertising, selling or leasing, or offering to sell or lease, reissued motion-picture photoplays under titles other than those under which such photoplays were originally issued and exhibited, unless the former titles of such photoplays and the fact that they theretofore have been exhibited under such former titles, be clearly, definitely, distinctly, and unmistakably stated and set forth, both in the photoplay itself and in any and all advertising matter used in connection therewith in letters and type equal in size and prominence to those used in displaying the new titles."

While the findings of the Commission embraced but three pictures where the unfair methods were practiced, that is sufficient to support the order to desist. It is now well recognized that the act refers specifically to unfair methods of competition. This does not mean the general practice of the offender must be unfair in competition. General practice may involve many methods each conceived and to be applied for its particular desired result. One act that constitutes an unfair practice may of itself be offensive to the act. Congress had in mind, in this legislation, the prevention of acts which amount to unfair methods of competition, whatever their inception.[2] (*Federal Trade Comm.* v. *Gratz*, 253 U. S. 421.) To meet

[2] Senator Cummins, chairman of the committee which reported the bill, said (Cong. Rec., vol. 51, p. 11435):

"Unfair competition must usually proceed to great lengths and be destructive of competition before it can be seized and denounced by the anti-trust law. In other cases it must be associated with, coupled with, other vicious and unlawful practices in order to bring the person or the corporation guilty of the practice within the scope of the Anti-Trust Law. The purpose of this bill in this section, and in other sections which I hope will be added to it, is to seize the offender before his ravages have gone to the length necessary in order to bring him within the law that we already have.

"We knew little of these things in 1890. The commerce of the United States has largely developed in the last twenty-five years. The modern methods of carrying on business have been discovered and put into operation in the last quarter of a century; and as we have gone on under the Anti-Trust Law and under the decisions of the courts in their effort to enforce that law, we have observed certain forms of industrial activity which ought to be prohibited, whether in and of themselves they restrain trade or commerce or not. We have discovered that their tendency is evil; we have discovered that the end which is inevitably reached through these methods is an end which is destructive of fair commerce between the states. It is these considerations which, in my judgment, have made it wise, if not necessary, to supplement the Anti-Trust Law by additional legislation, not in antagonism to the Anti-Trust Law, but in harmony with the Anti-Trust Law, to more effectively put into the industrial life of America the principle of the Anti-Trust Law, which is fair, reasonable competition, independence to the individual, and disassociation among the corporations * * *."

this, the Anti-Trust Law was supplemented. To violate the Sherman Act, it is necessary to find that the practice has grown to such proportions and strength that the business and practice is obnoxious as a trust or monopoly and restrains trade.

No better illustration may be exampled than the instant case of these three offenses or acts which are unfair restraints of trade and damage the competitor who sells to the exhibitors. The Federal Trade Act was intended to reach such unfair business methods when the Anti-Trust Law could not do so. The Commission may restrain an act which tends so unduly to hinder competition as to permit the act to be classed as an unfair method of competing. An act which involves such fraud in competition as to render it unfair, is an act within the condemnation of this statute. It is by stopping its use before it becomes a general practice that the effect of an unfair method in suppressing competition is destroyed and competitors protected.

False and misleading advertising or representations concerning hosiery was held to be an unfair method of competition. (*Winsted Hosiery case*, 258 U. S. 483.) In that case a manufacturer's practice of selling underwear and other knit goods made partly of wool, was to label it "Natural Merino," "Natural Worsted" and "Natural Wool." This product was purchased by the consuming public in the retail trade as indicating pure wool fabrics. It misled part of the public into buying as all wool garments, garments made largely of cotton, and aided and encouraged misrepresentation by unscrupulous retailers and other salesmen. It was held to be an unfair method of competition as against manufacturers of like garments made of wool and wool and cotton who branded their products truthfully, and therefore should be suppressed under Sec. 5 of the Federal Trade Act. It was held further that such method of competition does not cease to be so because competitors became aware of it or because it becomes so well known to the trade that retailers as distinguished from consumers are not deceived by it.

The pictures in the instant case were presented in the advertising matter and misrepresented by the petitioner to the exhibitors as new pictures when they were in fact old. The exhibitors in the trade had a right to expect that a new name described a new picture. The exhibitors were accordingly deceived. It had been the custom to entitle the photoplay products truthfully. Fox's stipulated testimony concedes this. In *Royal Baking Powder Co.* v. *Federal Trade Comm.*, 281 Fed. 744, the petitioner, due to the increased cost of cream of tartar, discontinued manufacturing its widely advertised brand of cream of tartar baking powder which had been on the market for sixty years, and began to manufacture a phosphate baking powder and advertised it for sale at about one-half the former price, under practically the same trade name and put up in the same containers. This court held that the finding to the effect that this was misleading to the public and unfair to other manufacturers selling cream of tartar baking powder, was justified and that false and misleading labeling and advertising induced the public to believe that the phosphate baking powder it was manufacturing was the same as the more expensive cream of tartar baking powder which

it had formerly manufactured, was an unfair method of competition and could be prevented by the Trade Commission.

The fact that the petitioner has discontinued this misrepresentation and promises a business practice which will forbid the publishing of false advertising in the future, does not deprive the Commission of authority to command the company to desist from such advertising, for it is not obliged to assume that false representations or publications or advertising will not be resumed. (*Guaranty Vet. Co.* v. *Federal Trade Comm.*, 285 Fed. 860.) This record establishes that exhibitors were actually misled by the contracts and the advertising matter into the belief that the pictures purchased for exhibition were new pictures. The case, therefore, presents the instance of a producer and distributor misrepresenting the quality of his goods in his contracts and in his advertising matter, misrepresenting them so that the trade, apart from the public, was misled and deceived. In the reissuance of the old pictures under the new titles, without any intimation or notice concerning their origin or history, the petitioner was passing off one of its products for another of its products, that is to say, one of its old productions for a new production. This order to desist will not prohibit the remaking of a photoplay in which an entirely new cast is used or an entirely new production is made, or where the original title is used or reference made thereto in the advertising of the picture. There is no objection to the use of the former photoplay if the name be not changed and no deception be practiced in its release to the exhibitors or its exhibition.

The order of the Commission is affirmed.

FEDERAL TRADE COMMISSION *v.* RAYMOND BROS.-CLARK CO.[1]

(Supreme Court of the United States, January 7, 1924.)

No. 102.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—REFUSAL TO PURCHASE FROM MANUFACTURER, UNLESS SALES TO COMPETITOR CEASE, NOT UNFAIR COMPETITION; "UNFAIR METHOD OF COMPETITION."

A wholesaler's refusal to purchase further from a manufacturer, unless the manufacturer discontinued sales to a competitor, *held* not an "unfair method of competition," within the Federal Trade Commission Act (Comp. St. Secs. 8836a–8836k); no element of conspiracy being involved.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—"UNFAIR METHOD OF COMPETITION" DEFINED.

The words "unfair method of competition," as used in the Federal Trade Commission Act (Comp. St. Secs. 8836a–8836k), are inapplicable to practices not previously regarded as apposed to good morals, because characterized by deception, bad faith, fraud, or oppression, or as against public policy, because of their dangerous tendency unduly to hinder competition or create monopoly.

---

[1] 263 U. S. 565.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—INDIVIDUAL RETAINS REASONABLE DISCRETION IN BUSINESS METHODS UNDER FEDERAL TRADE COMMISSION ACT.

Under the Federal Trade Commission Act (Comp. St. Sections 8836a–8836k), the individual retains the right to exercise reasonable discretion in respect of his own business methods.

4. CONSPIRACY KEY NO. 24—ACT LAWFUL WHEN DONE BY ONE MAY BECOME WRONGFUL WHEN DONE BY MANY ACTING TOGETHER.

An act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy, which may be prohibited, if the result be hurtful to the public, or to the individual against whom the concerted action is directed.

(The syllabus is taken from 44 Sup. Ct. Rep. 162.)

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Mr. Adrien F. Busick, of Washington, D. C., for petitioner.

Mr. Emmet Tinley, of Council Bluffs, Iowa, for respondent.

Mr. JUSTICE SANFORD delivered the opinion of the Court.

This writ brings up for review a decree of the Circuit Court of Appeals[2] which set aside an order of the Federal Trade Commission requiring the Raymond Bros.-Clark Company to desist from a method of competition held to be prohibited by the Trade Commission Act of September 26, 1914, c. 311, 38 Stat. 717.

By Section 5 of that Act "unfair methods of competition" in interstate commerce are declared unlawful, and the Commission is empowered and directed to prevent their use.

The Commission, in January, 1920, issued a complaint charging the Raymond Company with acts and practices the purpose and effect of which was to cut off the supplies purchased by the Basket Stores Company, a competitor, from the T. A. Snider Preserve Company, stifle and prevent competition by the Stores Company, and interfere with the right of the Stores Company and the Snider Company to deal freely with each other in interstate commerce. The Raymond Company answered, and evidence was taken. The Commission made a report, stating its findings of fact and conclusions.

The material facts shown by the findings are: The Raymond Company and the Stores Company are dealers in groceries, with their principal places of business and warehouses in Nebraska. They buy groceries in wholesale quantities from manufacturers in other States, which are shipped to their warehouses and resold to customers within and outside of Nebraska. Each does an annual business of approximately $2,500,000. The Raymond Company sells exclusively at wholesale. The Stores Company operates a chain of retail stores, but also sells at wholesale. In its wholesale trade, which constitutes about ten per cent of its total business, it is a competitor of the Raymond Company. The Snider Company is a manufacturer of

[2] 280 Fed. 529. Also reported in 4 F. T. C. 625.

groceries, with its office in Illinois. In September, 1918, it sold groceries to the Raymond Company, the Stores Company, and other neighboring dealers. These groceries were shipped in interstate commerce in a "pool" car to the Raymond Company, for distribution among the several purchasers.[3] The Raymond Company, upon thus learning of the sale to the Stores Company, delayed the delivery of its portion of the groceries, to the hindrance and obstruction of its business, and wrote to the Snider Company, protesting against the sale direct to the Stores Company and asking for the allowance of the jobber's profit on such sale.[4] Later, the Raymond Company declined to pay the Snider Company until this commission was allowed, and threatened to cease business with it and return all goods purchased from it then in stock, unless it allowed this commission and discontinued direct sales to the Stores Company; and, thereafter, an attempted settlement of the controversy having failed the Raymond Company ceased to purchase from the Snider Company.

The conclusions of the Commission were: That the conduct of the Raymond Company tended to, and did, unduly hinder competition between the Stores Company and others similarly engaged in business; that the purpose of the Raymond Company was also to press the Snider Company to a selection of customers, in restraint of its trade, and to restrict the Stores Company in the purchase of commodities in competition with other buyers; and that the conduct of the Raymond Company tended to the accomplishment of this purpose.

The Commission thereupon adjudged that the method of competition in question was prohibited by the Act, and ordered the Raymond Company to desist from directly or indirectly hindering or preventing any person, firm, or corporation in or from the purchase of groceries or like commodities direct from the manufacturers or producers, in interstate commerce, or attempting so to do; hindering or preventing any manufacturer, producer, or dealer in groceries and like commodities in or from the selection of customers in interstate commerce, or attempting so to do; and influencing or attempting to influence any such manufacturer, producer, or dealer not to accept as a customer any firm or corporation with which, in the exercise of a free judgment, he has, or may desire to have, such relationship.

Upon a petition of the Raymond Company for review of this order, the Circuit Court of Appeals held that the findings of fact did not show an unfair method of competition by the Raymond Company as to the Stores Company or others similarly engaged in business. The court said: "There is no finding that petitioner combined with any other person or corporation for the purpose of affecting the trade of the Basket Stores Company, or others similarly engaged in business. So far as petitioner itself is concerned, it had the positive and lawful right to select any particular merchandise which it wished to purchase, and to select any person or corporation from whom it might

[3] The facts that the Snider Company's office is in Illinois and that it shipped these groceries in interstate commerce are not stated in the findings, but they otherwise appear in the record and are not disputed.

[4] It otherwise appears from the record that the ground of its protest and claim was its assertion that the Stores Company was "nothing but a retail store."

wish to make its purchase. The petitioner had the right to do this for any reason satisfactory to it or for no reason at all. It had a right to announce its reason without fear of subjecting itself to liability of any kind. It also had the unquestioned right to discontinue dealing with any manufacturer, . . . for any reason satisfactory to itself or for no reason at all. Any incidental result which might occur by reason of petitioner exercising a lawful right cannot be charged against petitioner as an unfair method of competition." The decree setting aside the order of the Commission was thereupon entered.

We pass, without determination, the preliminary contentions of the Raymond Company, that the findings of the Commission are not supported by the testimony, in many respects,[5] and that, as both the complaint and the findings of fact relate merely to a controversy between it and a single manufacturer, over a single shipment of merchandise, the broad order of the Commission, commanding it to desist from all acts of like character with "the entire commercial world" is improvident, and can not be sustained.[6]

The gravamen of the contention in behalf of the Commission is that the conduct of the Raymond Company, acting alone and not in combination with others, in threatening the withdrawal of patronage from the Snider Company if it continued to sell goods to the Stores Company, constituted an unfair method of competition, oppressive in its character, unlawful when tested by common law criteria, and having a dangerous tendency unduly to hinder competition.

The words "unfair method of competition," as used in the Act, "are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." *Federal Trade Comm.* v. *Gratz*, 253 U. S. 421, 427; *Federal Trade Comm.* v. *Beech-Nut Co.*, 257 U. S. 441, 453. If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods, must be preserved. *Federal Trade Comm.* v. *Gratz*, supra, page 429.

The present case discloses no elements of monopoly or oppression. So far as appears the Raymond Company has no dominant control of the grocery trade, and competition between it and the Stores Company is on equal terms. Nor do we find that the threatened withdrawal of its trade from the Snider Company was unlawful

[5] The Raymond Company insists that the testimony shows, among other things, that it did not intentionally delay the delivery of the groceries to the Stores Company; that the Stores Company is not its competitor in the wholesale business, but engaged in the retail business, selling groceries to consumers in competition with other retail dealers to whom the Raymond Company sells at wholesale; and that it did not threaten the Snider Company with the withdrawal of patronage if it continued to sell to the Stores Company, but merely expressed surprise at the change made by the Snider Company from its former policy of selling only to wholesalers, and declared that it would not have made its own purchases had it known of this change.

[6] The Circuit Court of Appeals stated, in the outset of its opinion, that, in any event, as the proceeding related to the use of an unfair method of competition against the Stores Company, the order of the Commission, being "as broad as the business world," would have to be modified if sustained in any particular. See *Federal Trade Comm.* v. *Gratz*, 253 U. S. 421, and *Western Sugar Refining Co.* v. *Trade Comm.* (C. C. A.), 275 Fed. 725, 732.

at the common law, or had any dangerous tendency unduly to hinder competition.

It is the right, "long-recognized," of a trader engaged in an entirely private business, "freely to exercise his own independent discretion as to the parties with whom he will deal." *United States* v. *Colgate & Co.*, 250 U. S. 300, 307. See also *United States* v. *Freight Ass'n*, 166 U. S. 290, 320; *Dueber Watch-Case Co.* v. *Howard Watch Co.* (C. C. A.), 66 Fed. 637, 645; *Great Atlantic Tea Co.* v. *Cream of Wheat Co.* (C. C. A.), 227 Fed. 46, 48; *Wholesale Grocers' Ass'n* v. *Trade Comm.* (C. C. A.), 277 Fed. 657, 664; *Mennen Co.* v. *Trade Comm.* (C. C. A.), 288 Fed. 774, 780; *Booth* v. *Burgess*, 72 N. J. Eq. 181, 190; and 2 Cooley on Torts, (3d ed.), 587. Thus a retail dealer "has the unquestioned right to stop dealing with a wholesaler for reasons satisfactory to himself." *Eastern States Lumber Co.* v. *United States*, 234 U. S. 600, 614; *United States* v. *Colgate & Co.*, supra, page 307. He may lawfully make a fixed rule of conduct not to buy from a producer or manufacturer who sells to consumers in competition with himself. *Granada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 440. Or he may stop dealing with a wholesaler who he thinks is acting unfairly in trying to undermine his trade. *Eastern States Lumber Co.* v. *United States*, supra, page 614; *United States* v. *Colgate & Co.*, supra, 307. Likewise a wholesale dealer has the right to stop dealing with a manufacturer "for reasons sufficient to himself." And he may do so because he thinks such manufacturer is undermining his trade by selling either to a competing wholesaler or to a retailer competing with his own customers. Such other wholesaler or retailer has the reciprocal right to stop dealing with the manufacturer. This each may do, in the exercise of free competition, leaving it to the manufacturer to determine which customer, in the exercise of his own judgment, he desires to retain.

A different case would of course be presented if the Raymond Company had combined and agreed with other wholesale dealers that none would trade with any manufacturer who sold to other wholesale dealers competing with themselves, or to retail dealers competing with their customers. An act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed. *Granada Lumber Co.* v. *Mississippi*, supra, page 440; *Eastern States Lumber Co.* v. *United States*, supra, page 614. See also *Binderup* v. *Pathe Exchange*, 263 U. S. 291 (Nov. 19, 1923).

We conclude that the Raymond Company in threatening to withdraw its trade from the Snider Company exercised its lawful right, and that its conduct did not constitute an unfair method of competition within the meaning of the Act. The decree of the Circuit Court of Appeals is accordingly

Affirmed.

FEDERAL TRADE COMMISSION *v.* AMERICAN TOBACCO CO.[1]

SAME *v.* P. LORILLARD CO., INC.[1]

(Supreme Court of the United States. March 17, 1924.)

Nos. 206, 207.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—RESOLUTION OF SENATE DIRECTING TRADE COMMISSION TO MAKE INVESTIGATION WITHOUT REFERENCE TO ALLEGED VIOLATION OF LAW NOT CONSIDERED.

A resolution of the Senate, directing the Federal Trade Commission to investigate and report the tobacco situation as to domestic and export trade, etc., but without reference to any alleged violation of antitrust acts (Comp. St. sec. 8820 et seq.), is not within the provisions of the act of September 26, 1914, sec. 6 (Comp. St. sec. 8836f), authorizing the commission, on direction of the President or either House of Congress, to investigate and report the facts relative to any violation of the antitrust acts by any corporation, and hence such a resolution need not be considered on petitions for mandamus to compel production of records for inspection.

2. SEARCHES AND SEIZURES KEY NO. 7—TRADE COMMISSION NOT EMPOWERED TO COMPEL COMPANIES TO PRODUCE ALL THEIR BOOKS AND PAPERS.

The Federal Trade Commission, under act of September 26, 1914, sections 6, 9 (Comp. St. secs. 8836f, 8836i), has no power to compel tobacco companies to produce all their books and papers, relevant or irrelevant, including those relating to intrastate business, in order to disclose the possible existence of practices in violation of section 5 (Comp. St. sec. 8836e), in view of constitutional amendment 4, as the mere fact of carrying on commerce not confined within State lines, and of being organized as a corporation, do not make men's affairs public, as those of a railroad company now may be.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—DEMAND BY TRADE COMMISSION FOR PRODUCTION OF RECORDS MUST BE REASONABLE, AND SHOW THAT RECORDS ARE MATERIAL.

A ground must be laid for a demand of the Federal Trade Commission that a private corporation produce certain records, and the demand must be reasonable, and some evidence of the materiality of the papers demanded must be produced before the corporation can be compelled to comply.

(The syllabus is taken from 44 Sup. Ct. 336.)

In error to the District Court of the United States for the Southern District of New York.

---

[1] 264 U. S. 298. Petition for rehearing denied June 9, 1924.

Mr. James A. Fowler, of Knoxville, Tenn., and the Attorney General, for plaintiff in error.

Mr. Junius Parker, of New York City, for defendant in error, American Tobacco Co.

Mr. William D. Guthrie, of New York City, for defendant in error, P. Lorillard Co.

Mr. JUSTICE HOLMES delivered the opinion of the court.

These are two petitions for writs of mandamus to the respective corporations respondent, manufacturers and sellers of tobacco, brought by the Federal Trade Commission under the act of September 26, 1914, c. 311, section 9, 38 Stat. 717,722, and in alleged pursuance of a resolution of the Senate passed on August 9, 1921. The purpose of the petitions is to require production of records, contracts, memoranda, and correspondence for inspection and making copies. They were denied by the district court (283 Fed. Rep. 999). The resolution directs the commission to investigate the tobacco situation as to domestic and export trade with particular reference to market price to producers, etc. The act directs the commission to prevent the use of unfair methods of competition in commerce and provides for a complaint by the commission, a hearing and a report, with an order to desist if it deems the use of a prohibited method proved. The commission and the party concerned are both given a resort to the circuit court of appeals (section 5). By section 6 the commission shall have power (*a*) to gather information concerning, and to investigate the business, conduct, practices, and management of any corporation engaged in commerce, except banks and common carriers, and its relation to other corporations and individuals; (*b*) to require reports and answers under oath to specific questions, furnishing the commission such information as it may require on the above subjects; (*c*) upon the direction of the President or either house of Congress to investigate and report the facts as to alleged violation of the antitrust acts. By section 9 for the purposes of this act the commission shall at all reasonable times have access to, for the purposes of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against, and shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. In case of disobedience an order may be obtained from a district court. Upon application of the Attorney General the district courts are given jurisdiction to issue writs of mandamus to require compliance with the act or any order of the commission made in pursuance thereof. The petitions are filed under this clause and the question is whether orders of the commission to allow inspection and copies of the documents and correspondence referred to were authorized by the act.

The petitions allege that complaints have been filed with the commission charging the respondents severally with unfair competition by regulating the prices at which their commodities should be resold, set forth the Senate resolution, and the resolutions of the commission

to conduct an investigation under the authority of sections 5 and 6 (a), and in pursuance of the Senate resolution, and for the further purpose of gathering and compiling information concerning the business, conduct and practices, etc., of each of the respondent companies. There are the necessary formal allegations and a prayer that unless the accounts, books, records, documents, memoranda, contracts, papers, and correspondence of the respondents are immediately submitted for inspection and examination and for the purpose of making copies thereof, a mandamus issue requiring, in the case of the American Tobacco Company, the exhibition during business hours when the commission's agent requests it, of all letters and telegrams received by the company from, or sent by it to all of its jobber customers, between January 1, 1921, to December 31, 1921, inclusive. In the case of the P. Lorillard Company the same requirement is made and also all letters, telegrams, or reports from or to its salesmen, or from or to all tobacco jobbers' or wholesale grocers' associations, all contracts or arrangements with such associations, and correspondence and agreements with a list of corporations named.

The Senate resolution may be laid on one side as it is not based on any alleged violation of the antitrust acts, within the requirement of section 6 (d) of the act. *United States* v. *Louisville & Nashville R. R. Co.*, 236 U. S. 318, 329. The complaints as to which the commission refused definite information to the respondents, and one at least of which we understand has been dismissed, also may be disregarded for the moment, since the commission claims an unlimited right of access to the respondents' papers, with reference to the possible existence of practices in violation of section 5.

The mere facts of carrying on a commerce not confined within State lines and of being organized as a corporation do not make men's affairs public, as those of a railroad company now may be. *Smith* v. *Interstate Commerce Commission*, 245 U. S. 33, 43. Anyone who respects the spirit as well as the letter of the fourth amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 479) and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the commission's wholesale demand would cause are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. The unwillingness of this court to sustain such a claim is shown in *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, and as to correspondence, even in the case of a common carrier, in *United States* v. *Louisville & Nashville R. R. Co.*, 236 U. S. 318, 335. The question is a different one where the State granting the charter gives its commission power to inspect.

The right of access given by the statute is to documentary evidence—not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. Formerly in equity the ground must be found in admissions in the answer. Wigram, Discovery, 2d ed., Section 293. We assume that the rule to be applied here is more liberal, but still a ground must be laid and the ground and the demand must be reasonable. *Essgee Co.* v. *United States*, 262 U. S. 147, 156, 157. A general subpœna in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded must be produced. *Hale* v. *Henkel*, 201 U. S. 43, 77. In the State case relied on by the Government, the requirement was only to produce books and papers that were relevant to the inquiry. *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541. The form of the subpœna was not the question in *Wheeler* v. *United States*, 226 U. S. 478, 488.

The demand was not only general, but extended to the records and correspondence concerning business done wholly within the State. This is made a distinct ground of objection. We assume for present purposes that even some part of the presumably large mass of papers relating only to intrastate business may be so connected with charges of unfair competition in interstate matters as to be relevant. *Stafford* v. *Wallace*, 258 U. S. 405, 520, 521. But that possibility does not warrant a demand for the whole. For all that appears the corporations would have been willing to produce such papers as they conceived to be relevant to the matter in hand. See *Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 256. If their judgment upon that matter was not final, at least some evidence must be offered to show that it was wrong. No such evidence is shown.

We have considered this case on the general claim of authority put forward by the commission. The argument for the Government attaches some force to the investigations and proceedings upon which the commission had entered. The investigations and complaints seem to have been only on hearsay or suspicion—but even if they were induced by substantial evidence under oath the rudimentary principles of justice that we have laid down would apply. We can not attribute to Congress an intent to defy the fourth amendment or even to come so near to doing so as to raise a serious question of constitutional law. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408; *U. S.* v. *Jin Fuey Moy*, 241 U. S. 394, 401.

Judgments affirmed.

NATIONAL BISCUIT CO. *v.* FEDERAL TRADE COMMISSION.[1]

LOOSE-WILES BISCUIT CO. *v.* SAME.

(Circuit Court of Appeals, Second Circuit. May 5, 1924.)

No. 346.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—PERMITTING OWNER OF CHAIN STORES TO POOL PURCHASES, AND REFUSING TO PERMIT OWNERS OF SINGLE STORES TO POOL PURCHASES, FOR COMPUTATION OF DISCOUNT, HELD FAIR COMPETITION.

A sales policy of giving a graduated quantity discount to owner of chain stores on total purchases of all the stores of the chain, and refusing to allow owners of a single store to pool their purchases for purpose of computing discount, *held* fair competition and not violative of Federal Trade Commission Act, Sec. 5 (Comp. St. sec. 8836e) and Clayton Act, Sec. 2 (Comp. St. Sec. 8835b).

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—COMMISSION'S FINDING OF FACTS SUPPORTED BY TESTIMONY CONCLUSIVE.

A finding of Federal Trade Commission as to the facts, if supported by testimony, is conclusive on a review in the Circuit Court of Appeals.

3 MONOPOLIES KEY NO. 12 (1)—SIZE DOES NOT CREATE MONOPOLY.

Size alone does not create a monopoly.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—MEANING OF PHRASE "UNFAIR METHODS COMPETITION" HELD FOR COURTS.

The meaning of the phrase "unfair methods of competition," within Federal Trade Commission Act, Sec. 5 (Comp. St. sec. 8836e), is for the courts and not the Commission to determine as a matter of law, and this rule is not voided by stating as a finding of fact what is a conclusion of law.

5. MONOPOLIES KEY NO. 8—EXCLUSION OF OTHERS FROM OPPORTUNITY OF DOING BUSINESS HELD MONOPOLIZING.

It is the exclusion of others from the opportunity of doing business that is regarded as monopolizing.

6. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—UNFAIR COMPETITION CHARACTERIZED BY FRAUD, DECEPTION, OR OPPRESSION.

To be successful may increase or render insuperable the difficulties that rivals must face, but it does not constitute fraudulent or unfair methods, as methods of competition, to be condemned as unfair, should be characterized by fraud, deception, or oppression.

(Syllabus taken from 299 Fed. 733.)

[1] Petition for writ of certiorari denied by the Supreme Court on Oct. 20, 1924.

Petitions to revise orders of the Federal Trade Commission.

Separate petitions by the National Biscuit Company and the Loose-Wiles Biscuit Company against the Federal Trade Commission to have set aside orders of the Commission separately entered against both petitioners. Orders reversed.

William C. Breed, Charles A. Vilas, George E. Shaw, and Dava T. Ackerly for National Biscuit Co.

J. Frederick Eagle and Carroll G. Walter for Loose-Wiles Biscuit Co.

W. H. Fuller and I. E. Lambert for Federal Trade Commission.

Before Hough, Manton, and Mayer, Circuit Judges.

MANTON, *Circuit Judge:*

These proceedings to review orders of the respondent were heard together and will be disposed of in one opinion.

The complaints against the petitioners charge (*a*) violation of Section 5 of the Federal Trade Commission Act (38 Stat. 717); (*b*) violation of Section 2 of the Clayton Act (38 Stat. 730). The petitioners manufacture and sell to retail grocers crackers, biscuits, cakes, and other bakery products. They are perishable and therefore sold in small quantities at frequent intervals to insure freshness and quality. The petitioners have a business policy of allowing the following discounts: (*a*) customers whose purchases from the company in a calendar month are less than $15.00 pay list prices with no discounts; (*b*) customers whose purchases from the company in a calendar month aggregate $15.00 or more receive a quantity discount of 5 per cent; (*c*) customers whose purchases from the company in a calendar month aggregate $50.00 or more receive a quantity discount of 10 per cent; (*d*) customers whose purchases from the company in a calendar month aggregate $200 or more receive a quantity discount of 15 per cent. For payment in cash a one per cent discount is given to all customers, and no customer under any circumstances receives any greater quantity discount than fifteen per cent.

The orders entered against the petitioners were the same in form and directs them to cease and desist—

"1. From discriminating in price between purchasers operating separate units or retail grocery stores of chain systems and purchasers operating independent retail grocery stores of similar kind and character purchasing similar quantities of respondent's products, where such discrimination is not made on account of difference in the grade or quality of the commodity sold, nor for a due allowance in the difference in the cost of selling or transporting, nor in good faith to meet competition in the same or different communities.

"2. From giving to purchasers operating two or more separate units or retail grocery stores of chain systems a discount on the gross purchases of all the separate units or retail stores of such chain system, where the same or a similar discount on gross purchases is not allowed or given to associations or combinations of independent grocers operating retail grocery stores similar to the separate units or stores of such chain system."

A chain store referred to in this proceeding is regarded as a series of two or more retail stores owned by one person or corporation. The quantity discounts allowed to owners of chain stores are computed upon the purchase of the owner of the chain for all his stores and quantity discounts computed at the same rates are allowed to the owner of a single store. In practice, the retailer owning one store must meet the competition of the branches of the chain stores whose owner because of the volume of his purchases for all his units or stores in the chain, obtains a greater discount than does the owner of the one store who does not use the same volume, and therefore does not buy in such quantities. The disadvantage is sought to be corrected by respondent, by requiring the petitioners to (1) base chain store discounts upon the quantity delivered to each store, treating each branch of the chain as a separate purchaser or owner, or (2) to allow separate and individual purchasers or owners to pool their purchases for the purpose of computing discounts. It is found as a fact—

"That the respondent [National Biscuit Company] is the largest single producer of such bakery products in the United States; that the total value of respondent's products for the year 1914 was approximately $46,143,210; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately $89,484,000. Figuring the same in percentages, the National Biscuit Company, for the year 1914, had approximately 51.6 per cent of the biscuit and cracker business in this country; that the value of respondent's products for the year 1919 was approximately $101,707,597; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately $204,020,000. Figuring the same in percentages, the National Biscuit Company, for the year 1919, had approximately 49.9 per cent of the biscuit and cracker business in this country; that the total value of respondent's products for the year 1921 was approximately $104,836,255; whereas the total value of production in the biscuit and cracker industry in the United States for the same year was approximately $187,509,000. Figuring the same in percentages, the National Biscuit Company, for the year 1921, had approximately 55.7 per cent of the biscuit and cracker business in this country; that east of the Mississippi River, for the year 1921, the National Biscuit Company had approximately 64.1 per cent of the biscuit and cracker business.

"The repondent has, in the various States of the United States, 28 cracker bakeries and 8 bread bakeries, and has sales agents established in more than 192 different cities. Quoting from the testimony of Albert B. Bixler, respondent's general sales manager, 'They are from Portland, Maine, to Portland, Oregon, and from Duluth to New Orleans, scattered over all the country.' In 1921, the respondent had approximately 248,487 customers. Nearly every grocer in Greater New York handles respondent's products, and in the District of Columbia and the vicinity thereof, out of 2,000 grocers, every one of them carried National Biscuit Company's products. Similar conditions exist in many cities of the United States. 'Uneeda Biscuit' is a cracker manufactured and sold by respondent, and is the fastest selling cracker in the world."

The Loose-Wiles Biscuit Company does about 15 per cent of the cracker and biscuit business in the United States. It is also found that the cracker and biscuit sales represent from one to three per-cent of the grocers' total business.

Error is assigned in the finding that the petitioners are engaged in interstate commerce. It is argued that the transactions affected by the order of the Commission are solely between agencies of the petitioners and retail merchants located adjacent to other branches within a State and therefore the respondent was without jurisdiction. The petitioners admitted in the answer filed, that they were engaged in interstate commerce, as charged in paragraph 1 of the complaint. There is some evidence that biscuits and crackers which are manufactured in one state are shipped without that state and to another within the United States in competition with other firms and corporations similarly engaged. Since this conclusion of fact has some support in the evidence, we must regard it as binding upon us. *Curtis Pub. Co.* v. *Federal Trade Commission*, 260 U. S. 568. We do not, however, regard the existence of this interstate commerce as material to the present litigation.

Section 5 of the Federal Trade Commission Act (38 Stat. 717) provides that unfair methods of competition in commerce are declared unlawful and the Commission is empowered to order a person, partnership, or corporation to cease and desist from using such unfair methods in commerce. The finding of the Commission as to the facts, if supported by testimony, is conclusive on the review in this court. The Supreme Court said as to the conclusiveness of the findings of the Commission in the *Curtis Publishing Company case*, supra:

"Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission."

Section 2 of the Clayton Act which is declared to be an act to supplement existing laws against unlawful restraints and monopolies and for other purposes (38 Stat. 730) provides:

"SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; Provided, That nothing herein contained *shall prevent discrimination in price between purchasers of commodities on account of difference in the grade, quality, or quantity* of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation,

or discrimination in price in the same or different communities made in good faith to meet competition: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

The gravamen of the offense or the unfair method is the granting of discounts to purchasers of quantities as above referred to. The Commission does not find that the respondents have a monopoly nor that they intend by unlawful means to obtain one. It is not charged or found that the petitioners have an agreement or understanding of any kind as to the creation of a monopoly or, indeed, the maintenance of a sales policy for such a purpose. The law does not make mere size of business an offense or the existence of unexerted power an offense. It requires overt acts and trusts to its prohibition of them and its power to repress or punish them. It does not compel competition nor require all that is possible. *United States* v. *U. S. Steel Corp.*, 251 U. S. 417; *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32. In the first case it was held to be lawful for a single corporation to control fifty per cent of the steel industry and in the latter, it was said to be lawful for a single corporation to control substantially all the shoe machinery industry. Size alone does not create a monopoly.

In many instances each branch of the chain stores is a distinct and separate purchaser; petitioners solicit and take orders and make deliveries to each unit of the chain, and it is found that in some instances the owner of but one store is in competition with a branch of a chain that handles no more of the companies' goods in a month than does the owner of but one store, and the unit of the chain store receives a discount. It is found that the cost of selling and delivery is the same. This is said to be the disadvantage in competing with chain stores and the various owners have pooled their orders because they do not carry on a large enough business to obtain the discounts. But the petitioners refuse to grant the discounts for such pooled or combined orders, and it is found that—

"An undue advantage in competing with the owners operating but one retail store in the handling of respondent's [petitioner's] said products which practices have the capacity to and do tend to substantially lessen competition and create a monopoly in the retail distribution of respondent's [petitioner's] products."

And the Commission says that (1) they "are all to the prejudice of the public"; and (2) they "are all to the prejudice" "of said respondent's competitors." This court announced in *Standard Oil Co.* v. *Federal Trade Commission*, 273 Fed. 478, that—

"It may be admitted that one function of the Trade Commission is to discern and suppress such practices in their beginning; but a thing exists from its beginning, and it is not a conclusion of law from any facts here found that a system which at present is keenly competitive, extremely advantageous to the public, and, in the opinion of a majority of the competent witnesses, economical, is at present unfair to anyone or unfair because tending to monopoly. A

tendency is an inference from proven facts, and an inference from the facts as found by the Commission is a question of law for the Court."

In *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774 (certiorari denied, 262 U. S. 759) a charge was made against the petitioner which sold its products to wholesalers, retailers, and cooperative corporations of retailers who practiced unfair methods of competition in violation of the Trade Commission Act and of Section 2 of the Clayton Act, in that they refused to grant to cooperative corporations of retailers or to retailers therein discounts as large as those granted wholesalers. One of the charges against the petitioner there was that the practice of varying discounts irrespective of the quantity and quality tended unduly to hinder competition between distributors of the respondent's products to retailers or directly to the consuming public. This court set aside the Commission's order and announced:

"In this case, as in the *Gratz case*, the complaint contains no intimation that the Mennen Company has any monopoly of the business of manufacturing and selling toilet articles or that it has the ability or intent to acquire one. So far as appears the Mennen Company, acting independently, has undertaken to sell its own products in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take them upon terms openly announced.

"In this case, as in the *Gratz case*, nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. The allegation that its practice of varying discounts tended unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public is a pleader's conclusion. The acts complained of in this case are not those which have heretofore been regarded as 'opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.' And as said in the *Gratz case:* 'If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved.'"

Whatever may be the exact meaning of the phrase "unfair methods of competition," it is now settled that it is for the courts and not the commission to determine as a matter of law what is and what is not included in the phrase. This rule is not voided by stating as a finding of fact what is a mere conclusion of law. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421; *Standard Oil Co.* v. *Federal Trade Commission*, 273 Fed. 478; *N. J. Asbestos Co.* v. *Federal Trade Commission*, 264 Fed. 509. It is very apparent that no cracker manufacturer could be prejudiced by the refusal of his largest rival to satisfy customers or prospective customers by granting the discounts desired. Such a refusal could only have the effect upon a competitor of driving the dissatisfied customer to it. In this regard, there is nothing to indicate that the public was in any way prejudiced by the discounts. There is no claim that the owners

of chain stores are not competing one with the other or with other retail grocers, including those who have pooled or combined for ordering purposes, and there being no allegation or suggestion of any agreement or understanding among manufacturers, it is evident that the public purchases its bakery products in an open competitive market as respects both manufacturer and distributor. The only pools or combinations are among the grocers who seek to combine for ordering purposes. The practice of giving discounts is permitted under Section 2 of the Clayton Act where it is provided "that nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition."

The holding below does not say that the size of the petitioner's business was attained or contributed to by unfair or unlawful methods or that it had any monopoly or control of the biscuit or cracker business, nor that it does injure its competitors or restrain trade among them. No conspiracy is alleged or proven. Indeed, the petitioner, the Loose-Wiles Co., has but fifteen per cent of the business. And there are many smaller cracker and biscuit manufacturers throughout the country. It is the exclusion of others from the opportunity of doing business that is regarded as monopolizing. *Patterson* v. *United States*, 222 Fed. 599. It has been said that size may increase trade and may benefit the consumer. *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502. There is a finding that the petitioners have extensively advertised and have created a great demand for their products throughout the United States, and now the Commission concludes that "in many localities the demand for such products is so great that it is impossible for a retail grocer to successfully conduct his business if he does not handle respondent's products."

Even though the manager of the branch store of a chain exercises the fullest discretion in determining what and how he will purchase from the company and that the salesmen and deliverymen of the company spend as much time and effort in the branch store of the retail grocer as in the store of the so-called independent or individual grocer, it cannot be said that the branch store of the chain retailer is a separate or different purchaser as intended by Section 2. It is undeniable that the manager of a branch of a chain store system who may have the fullest individual authority in dealing with the salesmen or deliverymen of the petitioner, is nevertheless an employee or agent of the owner of the chain system and can not be regarded as a different purchaser; the indebtedness is incurred by the company, the payment is made by it and the goods are delivered to it. It may be that the cost of selling the chain is the same as the cost of selling to the owner of but one store, but that does not sustain the charge of price discrimination for there is no provision in the Clayton Act or elsewhere that the price to two different purchasers must be the same if it cost the seller as much to sell one as it does to the other.

The provision of Section 2 of the Act as to the difference in the cost of selling is merely one of many separate and distinct permissive exemptions in that section expressly declaring price determination to be lawful if within the particular exception. Equal opportunity is given to all, in the discount system of petitioners' business. The determining factor is the quantity consumed; there is no discrimination among purchasers. All are supplied on equal terms according to the quantity purchased. While the chain stores have grown in numbers, this record demonstrates that there are thousands of retail grocers who are carrying on their business in one store. The discount plan was designed for the individual dealer as well as for the large chain store owner. It is the right of a merchant engaged in private business freely to exercise his own independent discretion as to the parties with whom he will deal. *Federal Trade Commission* v. *Raymond Bros.-Clark Co.*, 280 Fed. 529, 64 L. Ed. 175; *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, 224 Fed. 566. The only injury claimed as a result of the petitioners' acts comes after the retailer has the biscuits or crackers and is disposing of them at retail. Then it is said, one retailer has an undue advantage over another of the same competing class. But we said in the *Mennen case:*

"This substitution in the final stages of the Clayton Bill of the clause to which we have referred plainly indicates the intent of Congress to exclude from the operation of the Section (Section 2) mere competition among 'purchasers' from the 'seller' or 'person' who allowed or withheld the discount and to include therein only competition between such 'seller' or 'person' and the latter's own competitors."

This section can have no application unless the unfair act substantially lessens competition or tends to create a monopoly in any line of commerce. It was never intended by Congress that the Trade Commission would have the duty and power to judge what is too fast a pace for merchants to proceed in business and to compel them to slow up. To do so, would be to destroy all competition except that which is easy. Congress intended to eliminate all varieties of fraudulent practices from business in interstate commerce. *Sinclair Refining Co.* v. *Federal Trade Comm.*, 276 Fed. 686. "The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill, and capital should have large freedom of action in the conduct of their own affairs," said the Supreme Court in *Federal Trade Commission* v. *Sinclair Refining Co.*, 261 U. S. 463.

Effective competition requires that merchants have freedom of action in conducting their own affairs. To be successful may increase or render insuperable the difficulties that rivals must face, but it does not constitute reprehensible or fraudulent methods. *Federal Trade Commission* v. *Curtis Pub. Co.*, 260 U. S. 568. The method of competition to be condemned as unfair should be characterized by fraud, deception, or oppression. *Federal Trade Comm.* v. *Curtis*, supra; *Federal Trade Comm.* v. *Gratz*, 253 U. S. 421; *N. J. Asbestos*

Co. v. *Federal Trade Comm.*, 264 Fed. 511; *Silver Co.* v. *Federal Trade Comm.*, 289 Fed. 983.

In its complaint the Commission charged that the practices were all to the prejudice of the public. It does not make any specific finding as to this. The practice of discounts is not an unfair method of competition under the statute unless it is prejudicial to the public. The intent of the act is the prevention of injury to the general public and what forms the basis of the proceeding is that it deceives the public or that it was unfair alike to the public and to the competitors. *Royal Baking Powder Co.* v. *Federal Trade Comm.*, 281 Fed. 744; *N. J. Asbestos Co.* v. *Federal Trade Comm.*, 264 Fed. 510.

We conclude that the sales policy of the petitioners as to their discount plan, as well as the refusal to sell cooperative or pooling buyers, is fair in all respects as to all its competitors and customers. This policy obviously does not affect the public interest nor deprive it of anything it desires. It is a practice which is recognized by manufacturers of bakery products and is inoffensive to good business morals. It was error to direct the petitioners to sell to individual grocers who pooled their orders of purchase or who bought on a cooperative basis. While a chain store owner may handle more crackers because of his ownership of more than one store, this is but the result of healthy competition. A manufacturer of biscuits can not be expected to adopt a uniform policy that is appropriate to meet the small buyer and the large buyer. There is no discrimination between the large buyer such as the owner of a chain store and the grocer owning but one store.

There is evidence in the record that many individual grocers do a large enough business to win the discount provided for under the petitioners' policies. A pool is organized merely to buy and not for selling purposes. The manager of the pool, when it has a manager, merely buys as an agent or employee of the pool. He has no control over any of the various grocers in the pool. He incurs no financial liability. Each member of the pool controls his own business and is liable for his own indebtedness. The case is different where the sale is made direct to the manager of a chain unit. By pooling purchases, the retail customers of the petitioners would afford no service in the sale of the petitioners' product to the consumers, beyond that which each furnishes individually, and it may be noted that the advertising of the large chain stores inures to the benefit of the petitioners' products by creating a widespread and uniform demand for their products and consequently larger sales.

For these reasons we regard the orders below entered against each of the petitioners as improvidently granted and the orders complained of are reversed.

JOHN BENE & SONS, INC. *v.* FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Second Circuit. May 8, 1924.)

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION—KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—COURT MUST INQUIRE WHETHER TRADE COMMISSION'S FINDINGS SUPPORTED BY EVIDENCE.

On petition to review order of Federal Trade Commission, court must inquire whether Commission's findings of fact are supported by evidence.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—TESTIMONY, THOUGH LEGALLY INCOMPETENT, MAY BE RECEIVED BY FEDERAL TRADE COMMISSION.

Evidence or testimony, even though legally incompetent, if of kind that usually affects fair-minded men in conduct of their daily and more important affairs, should be received and considered by Federal Trade Commission, but it should be fairly done.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—PROCEEDING BY FEDERAL TRADE COMMISSION MUST BE IN INTEREST OF PUBLIC.

Under Federal Trade Commission Act, Section 5 (Comp. St. sec. 8836e), no complaint can issue from Federal Trade Commission, unless person complained of is using unfair method of competition in commerce, and a proceeding by Commission in respect thereof would be "to the interest of the public."

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 67—PUBLIC HAD NO INTEREST IN PROTECTING MISBRANDED PRODUCT OF VARYING COMPOSITION.

The public had no interest in production of an antiseptic of varying composition and misbranded, in that the public was by its label requested to use it for purposes for which it was medically unfit, and Federal Trade Commission should not have granted any relief to its owner against unfair competition by another, under Federal Trade Commission Act, Sec. 5 (Comp. St. sec. 8836e).

(The syllabus is taken from 299 Fed. 468.)

Petition to review an order of the Federal Trade Commission made and entered December 27, 1922.[2] Order reversed.

Petitioner (hereinafter called Bene) is and was in 1918 engaged among other things in the manufacture and sale of hydrogen peroxide.

At the same time one Proper was making and selling a compound to which he gave the trade name of Daxol.

---

[1] 299 Fed. 468. Petition for rehearing denied May 26, 1924.

[2] See 5 F. T. C. 314.

Among the customers of Bene were certain store systems commonly known as chain stores, and the same chain stores or some of them had purchased some Daxol.

In the autumn of 1918 Bene obtained a bottle purporting to contain Daxol, and submitted it for analysis to a well-known independent laboratory in New York City. The result was not favorable to Daxol, and Bene communicated the same (in the language of the findings) "to the principal officers of * * * four large chain stores." In the month of December, petitioner submitted Daxol to another and different independent laboratory, and again the result of the analysis was not, to say the least, a favorable advertisement for Proper's compound. This analysis Bene sent (according to the findings) to one chain store manager, accompanied by a letter substantially advising the recipient to confirm the result of the analysis, and the comment of the letter, "by asking any chemist or doctor."

In April, 1920, the Commission issued a complaint alleging that the analyses aforesaid and Bene's comment upon them "contained certain false and misleading statements and representations concerning (Daxol); that among such false and misleading statements * * * (is the representation that Daxol) contained lime, and that the use of (Daxol) on the human body would be attended with great danger."

Bene answered promptly, averring *inter alia* that the analysis was correct and that the label upon Daxol was "absolutely false, fraudulent, and misleading."

Testimony on this issue was taken in September, 1921, and on December 27, 1922, findings were made to the effect:

1st. As the result of the analyses circulated by Bene, the chain store systems known as Kresge, McCrory, Kress, and Woolworth withdrew from sale in their stores the preparation known as Daxol, and shortly thereafter ceased to purchase the same.

2d. The analyses aforesaid and petitioner's comment thereon misled the customers of Proper into the belief that Daxol contained lime; that the use of the same on the human body would be attended with great danger, that Daxol was a weak solution and lost its effectiveness in about seventy-two hours.

3d. The truth of the matter is that Daxol contains either no lime, or lime in such small quantities as to be entirely innocuous, and its use on the human body would not be attended with great danger, and that Daxol is not a weak solution of bleaching powder and does not lose its effectiveness in seventy-two hours.

4th. That the statement of Bene concerning a competitive product, to wit, Daxol, that its use on the human body would be attended with great danger is false and that the statement of the analyses to the

effect that Daxol is a solution of calcium hypochlorite, commonly known as bleaching powder, is misleading, deceptive, and constitutes a misrepresentation.

Immediately on making these findings the order under review was entered. The order is as follows:

"It is ordered, that the respondent, John Bene & Sons (Inc.), its officers, agents, representatives, and employees do cease and desist from directly or indirectly publishing, circulating, or causing to be published or circulated, any false, deceptive, or misleading statements of or concerning the product of a competitor, and particularly from publishing, circulating, or causing to be published or circulated, directly or indirectly, such statements concerning the product Daxol manufactured by the Proper Antiseptic Laboratories of Cincinnati, Ohio, to wit:

"That 'This is a solution of calcium hypochlorite or as it is usually known, bleaching powder. It is our opinion that its use on the human body would be attended with great danger.'

"That 'Daxol' is a very weak solution of bleaching powder and loses its effect in about 72 hours."

Petition for review followed.

Frederick N. Van Zandt, of New York City, for petitioner.

W. A. Sweet, of New York City, and W. H. Fuller, of McAlester, Okla., for Federal Trade Commission.

Before Hough, Manton, and Mayer, Circuit Judges.

HOUGH, *Circuit Judge:*

Under the *Curtis Publishing Co. case*, 260 U. S., 568, we "must inquire whether the Commission's findings of fact are supported by evidence"; and this inquiry includes an ascertainment of what kind of evidence, or evidence so-called, the fact-findings rest upon.

If by evidence is meant testimonial matter legally competent, relevant, pertinent, and material, this record contains very little of that kind.

It was plainly desirable, as Bene manufactured hydrogen peroxide, to compare Daxol with the other preparation, and on this point one Irene Kuhlman replied in answer to the question "What are Daxol and peroxide used for," thus, "Well, not a serious wound of any kind; it is very injurious to a serious wound; for cuts, very small cuts, or bruises, or sore throat it was very helpful, the same as could be considered as to peroxide." How competent this witness was to answer this question over due objection is perhaps suggested by the fact that her usual and regular occupation was that of running a "beauty parlor."

It also seemed appropriate to show that the business of the proprietors of Daxol had been injured by what Bene had done, and how such injury had arisen, and Miss Kuhlman testified fully on this point. Her qualifications for giving such testimony were that on the 6th of January, 1920, she became connected with the corpora-

tion that succeeded Proper in the manufacture of Daxol. At this time she became a stockholder to the extent of one share, and a director, and she also, in her own language, "operated the books of the Company." After thus qualifying she testified at length concerning events that had occurred long before her connection with the concern. The scheme of her evidence may be judged from this question and answer:

"Q. Do you remember when this trouble arose about this analysis?—A. I was not connected with the Company, but at the time they incorporated the whole case was explained, and I have all the papers concerning the case."

She was permitted to testify not only as to correspondence antedating her connection with Proper's successor but as to the contents of books which were never produced. This evidence related to sales made by Proper individually prior to the time when (again in the witness's language) he "sold out as an individual and changed it to a corporation."

It was further necessary under the issue as framed, to prove the inaccuracy or falsity of the analyses made at Bene's request; and this was sought to be done by introducing the investigation of other chemists. Accordingly there was offered in evidence a report on Daxol made in February, 1919, by the chemist of the Dairy and Food Department of the State of Ohio, one made by the Bureau of Chemistry of the United States Department of Agriculture in November, 1919, and one made in September, 1921, by Pitkin, Inc., of New York City.

Apparently no effort was made to identify or ascertain the origin of the substance submitted for analysis, further than that it was contained in a bottle labeled "Daxol." The inference is necessarily that the Commission regarded the content of any bottle labeled "Daxol" as material to this issue, and it must also have been assumed that everything in a bottle labeled "Daxol" came from Proper. But there was no identification of what was analyzed as being Proper's product.

On the assumptions made, and without any evidence as to the age of the preparation as analyzed, the inferences are irresistible either that the preparation known as "Daxol" was not stable or that its composition varied.

The taking of opinion evidence extends over a field hitherto we think unknown in legal investigation. One of the chemists who had analyzed the contents of a Daxol bottle at the request of Bene had said that its use "on the human body would be attended with great danger." Whereupon another chemist was asked by the Commission's attorney, whether he thought Daxol would be injurious when applied to the human body. Over objection he was permitted to testify on the ground that "Well, it was a chemist that made the statement, that's the reason I think that he [the witness] is qualified." And examples of similar procedure might be multiplied.

The questions suggested by the foregoing references, are whether the Commission, in its investigations, is restricted to the taking of legally competent and relevant testimony. We incline to think that it is not by the statute, and having regard to the exigencies of administrative law, that it should not be so restricted.

We are of opinion that evidence or testimony, even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done. The Trade Commission, like many other modern administrative legal experiments, is called upon simultaneously to enact the rôles of complainant, jury, judge, and counsel. This multiple impersonation is difficult, and the maintenance of fairness perhaps not easy, but we regard the methods pursued in showing Proper's diminution in sales as lacking in every evidential or testimonial element of value; and opposed to that sense of fairness which is almost instinctive.

We note that no finding of fact was made by the Commission to the effect that Proper's sales of Daxol in the aggregate diminished. But a finding was made *ut supra* that four chain store systems excluded Daxol from their counters.

As to this finding the record contains no evidence whatever justifying any reference to the Woolworth Co. The agent of Kresge testified plainly that Daxol did not sell and that that was the reason "we discontinued carrying it." The buyer for McCrory declared that the chemical analysis would have had no effect on him if there had been a large trade in Daxol, and averred that the reason why he did not continue buying it was because the demand slackened. The witness produced from the Kress Company was the only support of the Commission's substantial averment, namely that these particular four chain stores dropped Daxol as the result of Bene's activities.

We can not think that such testimony as this affords a foundation either legal or reasonable for the finding first above summarized.

Having pointed out the infirmity of what was introduced as evidence, we shall not pause to inquire as to whether the order could be justified on all that is left of any probative value, to wit, the statement on behalf of the Kress Company, the various analyses, and the admissions of the petitioner herein. For there is a much more important question presented by this record.

This proceeding has nothing to do with the various antitrust acts; the only statute invoked is Section 5 of the act creating the Commission (38 Stat., 717, 724).

Under this statute there are two points that must be made to appear before any complaint can issue:

1st. That the person complained of "is using any unfair method of competition in commerce"; and

2d. That a proceeding by the Commission in respect thereof would be "to the interest of the public."[2]

It would seem elementary that whatever is necessary to justify a proceeding by the Commission must be proved in that proceeding by said Commission. Both these points are duly alleged in the complaint herein, but no finding has been made to the effect that the proceeding has been justified as being in the interest of the public.

That the public interest is to be considered in proceedings of this kind is manifest from all the reports. But it is sufficient to cite the *Winsted Hosiery case*, 258 U. S., 483. The Court said (page 493),

[2] See a discussion of this point by Denison, J., in *Silver v. F. T. C.*, 289 Fed. 985. (Also reported in 6 F. T. C. 559 at pp. 566 et seq.)

"The facts show that it is to the interest of the public that a proceeding to stop the practice be brought * * * When misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods." The decision cited rests flatly on the proposition that the goods there complained of were misbranded and therefore afforded an unfair method of competition with goods properly branded. But what the Court said concerning the goods advertised under a name deemed to contain improper and indeed fraudulent implications is just as applicable to goods sought to be protected and the sale thereof advanced through a proceeding *by* the Federal Trade Commission, but for the benefit and advantage primarily of a complainant; in this case a single person, the manufacturer of Daxol.

The real meaning of this litigation is perfectly shown by the witness Kuhlman, who after testifying that sales of Daxol had practically ceased at the time she testified, volunteered the statement that "the concerns to whom we have been selling this product have had no faith up to this time because of the analysis that has been forwarded to the different companies. If the decision is in our favor we may be able to reinstate their faith in the product." An objection by petitioner to this declaration was overruled, and the statement stands as a peculiarly frank exposition of the nature and purpose of the proceeding. We shall therefore consider, in the absence of any finding on the subject, whether it is true as alleged in the answer that what is imparted to the public by the label on the Daxol container is "false, fraudulent, and misleading."

The label on a Daxol bottle declares that it is a "new American antiseptic, stronger than peroxide." It is said to represent "the highest chemical skill in producing a most potent antiseptic similar to the one in use at hospitals, at the European fronts, and recognized to be the greatest medical discovery of the age." In a special note the public is recommended "To obtain the best results use Daxol as often as possible."

The directions for using this "potent antiseptic" are in part as follows: "For cuts, open wounds, and ulcers, moisten thoroughly on lint or cotton and apply freely. For sore throat gargle every half hour. For abscesses and boils apply freely by moistening cotton. For sore and inflamed eyes mix one teaspoonful to two tablespoons warm water and bathe eye." And there are other directions of a similar nature too long to quote.

Of the five analyses offered in evidence all but one report lime as present in varying proportions, and the one that does not mention lime does not pretend to be fully quantitative. This analysis put in evidence by the Commission concludes thus: "Product is principally chlorine water of a strength of 0.06 per cent. As a disinfectant free chlorine is only equal to hydrogen peroxide, so to be as strong this solution should be 3 per cent. Misbranded. Statement on label is false."

So far as chlorine is concerned, the proportions of that chemical found in the samples submitted vary enormously, viz, from 0.11 per cent to 0.058 per cent; while as for calcium hypochlorite (bleaching powder) it is present in a majority of the specimens submitted. The record contains no attack upon the accuracy of the several analyses.

It follows necessarily that we have here a compound either chemically unstable, which is a point no chemist testified upon, or varying in composition, which is a point any layman can ascertain and understand from the evidence herein.

Finally the record contains no contradiction of the evidence given from a highly qualified physician and surgeon who testified from all the analyses, and his own experience with disinfectants and antiseptics. This uncontradicted and unimpeached witness went through the label from which we have quoted above and pointed out that most of the purposes for which the proprietor so highly recommended Daxol meant the free application of this solution to mucous membrane both healthy and diseased. He gave it as his professional opinion that such applications of Daxol would invariably produce "an irritating caustic effect"; and he heartily agreed with the Ohio Food Department that Daxol was a misbranded article.

From this evidence we deduce as findings of fact:

1st. Daxol is a product of varying composition and misbranded in that the public is by its label requested to use it for purposes for which it is medically unfit.

2d. The public has no interest in the protection of such an article.

As a conclusion of law we hold that there being no proof of a public interest herein, or of its being to the interest of the public that this proceeding should have been begun or the order complained of made, said order must be reversed; and it is reversed accordingly.

ALUMINUM CO. OF AMERICA *v.* FEDERAL TRADE COMMISSION.

(Circuit Court of Appeals, Third Circuit. June 24, 1924.)

No. 2721.

1. MONOPOLIES KEY NO. 24 (2)—EVIDENCE HELD NOT TO SHOW CREATION OF FRAUDULENT INDEBTEDNESS IN ORDER TO ACQUIRE ASSETS OF ANOTHER COMPANY.

On application by Federal Trade Commission for modification of a decree affirming Commission's order requiring A. Co. to divest itself of its stock in R. Co., so that decree may enjoin A. Co. from acquiring any of the physical assets of R. Co., evidence of an indebtedness resulting from A. Co. selling aluminum ingots to R. Co. for 32 cents a pound held not to show creation of a fraudulent indebtedness, though A. Co. charged aluminum ingots to its subsidiary, of whose stock it owned 100 per cent, at uniform figure of 18½ cents a pound, during a period of great changes in prices.

2. MONOPOLIES KEY NO. 24 (2)—THAT COMPANY HAD BEEN REQUIRED TO DIVEST ITSELF OF STOCK IN ANOTHER COMPANY HELD NOT TO PREVENT COLLECTION OF BONA FIDE DEBT.

That A. Co. had been required, under Clayton Act, sec. 7 (Comp. St. sec. 8835g), to divest itself of its stock in R. Co., held not to prevent A. Co. from collecting a bona fide debt, in any manner provided by law, though it involved acquisition of physical assets of R. Co., now insolvent.

(The syllabus is taken from 299 Fed. 361.)

Petition by the Federal Trade Commission for modification of a previous decree in the above entitled cause. Petition denied.

William H. Fuller, of McAlester, Okla., and Edward L. Smith, of Washington, D. C., for Federal Trade Commission.

George B. Gordon and S. G. Nolin, of Pittsburgh, Pa., for Aluminum Co. of America.

Francis W. Treadway, of Cleveland, Ohio, for Cleveland Metal Products Co.

Before Buffington, Woolley and Davis, Circuit Judges.

WOOLLEY, *Circuit Judge:*

Upon facts stated at length in an opinion reported at 284 Fed. 401,[1] this court sustained an order of the Federal Trade Commission commanding the Aluminum Company of America, on a finding that it had violated section 7 of the Clayton Act, 38 Stat. 730 (Comp. Stat. 8885g), to divest itself of all its stock in the Aluminum Rolling Mills Company, a corporation having an aluminum sheet-rooling plant at Cleveland, Ohio. Of the stock of this company the Aluminum Company owned $400,000 and the Cleveland Metal Products Company owned $200,000 par value. The Commission's order provided against sale of the stock to any person or corporation in any way related to the Aluminum Company but expressly permitted sale to the Cleveland Company, the logical and, in the circumstances, the only possible purchaser. The Aluminum Company obeyed the order by selling its stock to that company. The purchase price was $1,000 but, as the Cleveland Company had lost about $200,000 in the venture, the Aluminum Company, in addition, promised to reimburse it to an amount equal to one-half of its losses, not to exceed $100,000.

After compliance with the order of the commission, this was the situation: The Cleveland Company owned all the stock of the Rolling Mills Company. The latter company had never made money. Indeed, it is wholly insolvent and its plant has been shut down for some time. Thus the Cleveland Company found itself in possession of a nominal asset with which it did not know what to do. Desiring aluminum sheets as a raw material in the manufacture of aluminum cooking utensils, the Cleveland Company had embarked in the business of rolling sheets at the outbreak of the war and made money at mounting prices for its surplus product. But upon the entrance of the United States into the war prices receded and the spread between the cost price of ingots and the selling price of sheets grew so small that it began to lose money. Thereupon the Aluminum Company appeared and with the Cleveland Company organized the Rolling Mills Company and engaged in the undertaking which the Federal Trade Commission found violated section 7 of the Clayton Act in that it substantially lessened competition, restrained commerce, and tended to create a monopoly. But now the Cleveland Company is out of the business of manufacturing aluminum cooking utensils; it no longer has need of aluminum sheets and has definitely determined never again to re-enter the aluminum industry.

[1] Also reported in 5 F. T. C. 529.

Therefore it has neither need nor place in its business for the plant of the Rolling Mills Company. In consequence it must either hold the plant, at growing costs, until it can find some use for it or sell it on a low real estate market. This is the situation as it bears on the Cleveland Company. As it bears on the Aluminum Company the situation is different but none the less acute. It is this:

The Rolling Mills Company is indebted to the Aluminum Company in approximately the sum of $600,000 upon four promissory notes representing the unpaid balance due the Aluminum Company for aluminum ingots and pig aluminum purchased during the operation of the plant. It is conceded that the Rolling Mills Company is insolvent. Nothing else being in sight, the Aluminum Company now purposes to bring suit on the notes and, after judgment, levy on the plant and bid at the sheriff's sale. Of this intention it frankly informed the Federal Trade Commission. As the indebtedness is greater than the value of the plant, the Aluminum Company will inevitably acquire the plant for its indebtedness.

In the light of these undisputed facts the Federal Trade Commission, conceiving the proposed action of the Aluminum Company to be violative in principle of all that has been done, filed a petition asking this court to modify its decree by which it affirmed the order of the commission (requiring the Aluminum Company to divest itself of its stockholdings in the Rolling Mills Company) so that the decree may extend to and enjoin the Aluminum Company, its officers, subsidiaries, and affiliated companies from acquiring any of the physical assets of the Rolling Mills Company.

The commission grounds its petition for modification of the decree upon a fact—sharply disputed—that "the alleged indebtedness claimed by the Aluminum Company of America against the Aluminum Rolling Mills Company was created in violation of law; that it is entirely fictitious; that it is merely book indebtedness, and created for the purpose of claiming that the plant of the Aluminum Rolling Mills Company was unprofitable; and brought about for the very purpose of the indebtedness becoming the basis for a judgment to enable the Aluminum Company of America to acquire the plant at execution sale and thereby become the owner of 100 per cent of said plant rather than 66⅔ per cent as theretofore," and maintains that "to permit the [Aluminum Company] to carry out its proposed action and buy the physical assets of the Aluminum Rolling Mills Company would be to allow the [Aluminum Company] to defeat the plain intent of section 7 of the Clayton Act, and [it would] constitute a plain and direct evasion of the order of the Federal Trade Commission, which, having been affirmed by this court, has now become the decree and judgment of this court."

In a word the contention of the commission is that the indebtedness in question is wholly fictitious and therefore fraudulent, and, being fraudulent, it can not be used to evade the former decree of this court or to do indirectly what section 7 of the Clayton Act prescribes shall not be done.

From this relatively brief summary of the long petition it is clear that the question in this phase of the controversy turns on the character of the indebtedness, whether bona fide or fraudulent. On this issue a reference was ordered and much testimony taken. To this testimony we have given full and careful consideration. It being

quite impracticable to discuss the testimony at length in this opinion, we shall do no more than give its trend and state our conclusion.

The fact basis of the alleged fictitious and therefore fraudulent indebtedness of the Rolling Mills Company to the Aluminum Company, created, as claimed, for the purpose of ultimately obtaining the plant, is the price at which from time to time the Aluminum Company sold aluminum ingots to this ostensibly independent concern by comparison with prices at which it sold the same product to its subsidiaries. In this connection the first important thing is the origin of the Rolling Mills Company, the purchaser. This corporation was organized on February 15, 1918. It began business on March 20, 1918, under the stock and operative control of the Aluminum Company. A few days before, namely, on March 8, 1918, and necessarily before any transactions of sale between these corporations had taken place, the War Industries Board fixed the price of aluminum ingots at thirty-two cents a pound and aluminum sheets at forty cents a pound. At these prices the Aluminum Company sold ingots to the Rolling Mills Company and the Rolling Mills Company sold sheets to the trade. Moreover, the Aluminum Company sold ingots to everyone except its subsidiaries at this price, or at prices changed from time to time by the War Industries Board, until February 28, 1919, when Government price control ceased. The narrow spread between the purchasing price for ingots and the selling price for sheets caused losses to the Rolling Mills Company, though it is probable that so far as these losses extended to the Aluminum Company they were offset by profits of that concern in the sale of ingots. But this alone did not amount to fraud. Transactions of purchase and sale of aluminum ingots between the Rolling Mills Company and the Aluminum Company ran into millions of pounds. Payment was made for most and the four notes in question were given for the balance. These notes were given on different dates through a period of three years, one after the commission had begun investigating the aluminum situation and three after the commission had issued the complaint in this case against the Aluminum Company. Having kept clearly in mind the distinction between the acquisition of stock of one corporation by another, the effect of which is substantially to lessen competition and to restrain commerce (the issue involved in the main case), and the issue here whether the indebtedness in question is bona fide or fraudulent, we have not thus far discerned fraud.

But the commission finds fraud not in the sale price for ingots per se but in comparison with the price at which the Aluminum Company sold ingots to the United States Aluminum Company. This corporation is a subsidiary of the Aluminum Company, of whose stock it owns 100 per cent, and to this concern it billed ingots during this period at eighteen and one-half cents per pound. Assuming that within these figures there was a profit, the commission points to fraud on the part of the Aluminum Company in building up a large indebtedness on the price of thirty-two cents charged the Rolling Mills Company when the price charged to another company was the smaller figure and urges also a violation of the decree of the District Court of the United States for the Western District of Pennsylvania, entered by consent in an action by the United States against the Aluminum Company enjoining that company from discriminating in prices between persons to whom it shall sell crude aluminum.

We pass by the latter point for, if substantial, it is a matter solely for the court whose decree is charged to have been violated. We are concerned only with discrimination by which an alleged fraudulent indebtedness has been built up. Was there discrimination amounting to fraud or was there discrimination at all? That depends upon the story of the figures eighteen and one-half cents.

These figures first came to view in 1912 and appeared as charge entries for ingots delivered to a fabricating subsidiary of the Aluminum Company. They have persisted without change from that date to the time in question. According to the testimony these figures did not, nor were they intended to, include profits. Neither did they fluctuate with the market. This is clearly shown by their lack of change through a period of great changes. Rather, they were static figures, arbitrarily selected, by which to gauge economy and efficiency in the fabrication for which a semiraw material was consigned and charged. They represented nothing more of profits and losses than the letter X, but were employed, like other figures, as a fixed and unvarying transfer price in intercorporation transactions running from ore to the finished product. Real profits and losses were reflected only in the consolidated balance sheet. This is the trend of the evidence and was, in our opinion, the purpose and meaning of the price which the Aluminum Company charged its subsidiary, the United States Aluminum Company, for ingots. If we are right in this, the discrimination on which the commission has built its charge of fraud falls out of the case. Without going into details, it will be sufficient to say that we have not been convinced that the Aluminum Company, looking years into the future, fraudulently created an indebtedness "for the very purpose" of taking advantage of a situation which it had all the while been fighting to prevent and which no one could reasonably conceive would arise.

Finding on this record that the indebtedness in question is not fraudulent, can this court amend its decree by restraining the Aluminum Company from proceeding in any manner provided by law for the collection of its debt? Certainly not unless empowered so to do by the Clayton Act, the source of its jurisdiction in this case. The seventh section of that act under which the Federal Trade Commission made its findings and this court affirmed its order concerns lessening of competition and restraint of trade. These we apprehend are issues no longer here involved. The Cleveland Company, the one stockholder of the Rolling Mills Company, has definitely withdrawn from the industry. The Rolling Mills Company is, in a competitive sense, dead. The plant is a shell rapidly falling into decay. It is, however, the only thing out of which a creditor, at one time offending against the Clayton Act, can recover what appears to be a bona fide debt. Does the Clayton Act, in a case like this, thus nullify other laws and deprive such a creditor of the right to resort to them? We have found nothing in its terms which indicates that it does.

Grounding our decision solely on the inability of the Federal Trade Commission to establish fraud in the indebtedness on which the Aluminum Company proposes to seek recovery at law in another court, we are constrained to deny its petition to amend the decree previously entered.

APPENDIX III.

RULES OF PRACTICE BEFORE THE COMMISSION.

I. SESSIONS.

Principal office.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Commission may exercise power elsewhere.

Hearings as ordered.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Sessions for orders and other business.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Quorum.

Orders signed by Secretary.

All orders of the Commission shall be signed by the Secretary.

II. COMPLAINTS.

Who may ask complaint.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Form of application.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Commission to investigate.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating

Issuance and service of complaint.

Notice. its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

III. ANSWERS.

Time allowed for answer. Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer

Form of answer. to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers

Size of paper, margin, etc. in typewriting must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide. Three copies of such answers must be furnished.

IV. SERVICE.

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (*a*) by delivering a copy thereof to

Personal, or the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director, of the corporation or associa-

By leaving copy, or tion to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, part-

By registered mail. nership, corporation, or association; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its prin-

Return. pical office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

V. INTERVENTION.

Form of application.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Permitted by order.

Size of paper, margin, etc., used on application.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

In discretion of Commission.

Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPŒNAS.

Examination ordinarily oral.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Subpœnas for witnesses.

Subpœnas requiring the attendance of witnesses from any place in the United States at and designated place of hearing may be issued by any member of the Commission.

Subpœnas for production of documentary evidence.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witness fees and mileage.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

VIII. TIME FOR TAKING TESTIMONY.

Examination of witnesses to proceed as fast as practicable.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Notice to counsel.

IX. OBJECTIONS TO EVIDENCE.

To state grounds of objection, etc.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS.

To briefly state nature of order applied for, etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS.

By single commissioner.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

General counsel or assistant to conduct hearing.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARINGS BEFORE EXAMINERS.

Examiner to take testimony.

When issue in the case is set for trial, it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same

Testimony to be completed within 30 days except for good cause.

unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "Trial Examiner's Report upon the Facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

Time allowance for submission of tentative findings.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Commission may order.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Before any person designated.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the depo-

Applications for depositions.

sition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form

Deposition to be forwarded. by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an enevelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposi-

And filed. Copy to defendant or his attorney. tion and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Size of paper, etc. Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

Notice. No deposition shall be taken except after at least six days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

Limitations as to time. No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE.

Relevant and material matter only to be filed. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evi-

dence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS.

Time of filing.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. If briefs are filed, the exceptions, if any, to the examiner's report must be incorporated in the briefs. The presiding Commissioner or examiner shall fix the time within which briefs shall be filed and service thereof shall be made upon the adverse parties.

Filed with secretary with proof of service.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered.

Applications for extension of time.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the Commission at least five days before the time for filing the brief.

Form of brief.

Every brief shall contain, in the order here stated—

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Requirements if more than 10 pages.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Size of type, paper, etc.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide and with double-leaded text and single-leaded citations.

Oral arguments.

Oral arguments will be had only as ordered by the Commission.

XVI. ADDRESS OF THE COMMISSION.

Federal Trade Commission, Washington, D. C.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

TABLE OF COMMODITIES.

INDEX.[1]

[1] For index by commodities involved, rather than practices, see Commodities Index.

ADDITIONAL COPIES
OF THIS PUBLICATION MAY BE PROCURED FROM
THE SUPERINTENDENT OF DOCUMENTS
GOVERNMENT PRINTING OFFICE
WASHINGTON, D. C.
AT
$1.75 PER COPY