

FEDERAL TRADE COMMISSION *v.* RUUD MANUFACTURING CO. AND PITTSBURGH WATER HEATER CO.

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

Docket No. 255.—June 30, 1919.

SYLLABUS.

Where two corporations, engaged in the manufacture and sale of water heaters, and having the exclusive right under certain patents to manufacture and sell such products, under the terms of an exclusive license agreement between them—

- (a) Sold their products under contracts, agreements, or understandings whereby the purchasers agreed to adhere to and maintain resale prices fixed and determined by the manufacturers; and
- (b) Refused to sell to dealers because they failed to adhere to such system of fixed prices:

Held, That a scheme of price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Ruud Manufacturing Co. and the Pittsburgh Water Heater Co., hereinafter referred to as respondents, have been and now are 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, the Ruud Manufacturing Co., 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 and place of business located at the city of Pittsburgh in the State of Pennsylvania, and is now and was at all times hereinafter mentioned, engaged in the manufacture of instantaneous automatic gas

water heaters and other water heaters, and selling and distributing instantaneous automatic gas water heaters and other water heaters, throughout the States and Territories of the United States and in the District of Columbia in direct competition with other similarly engaged.

PAR. 2. That the respondent, Pittsburgh Water Heater Co., 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 and place of business located at the city of Pittsburgh in the State of Pennsylvania, and is now and was at all times hereinafter mentioned, engaged in the manufacture of instantaneous automatic gas water heaters and other water heaters, and selling and distributing instantaneous automatic gas water heaters and other water heaters, throughout the States and Territories of the United States and in the District of Columbia in direct competition with others similarly engaged.

PAR. 3. Within two years last past the above-named respondents by agreement and understanding, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of instantaneous automatic gas water heaters and other water heaters manufactured and sold by respondents in commerce as aforesaid, did establish and adopt the terms, conditions, and policies which obtained with respect to the resale by dealers of instantaneous automatic gas water heaters and other water heaters manufactured and sold by respondents, and did engage in, adopt, and maintain a system of fixing prices at which the instantaneous automatic gas water heaters and other water heaters of said respondents should be resold by dealers, with the effect of securing the trade of dealers and enlisting their active cooperation in enlarging the sale of respondents' price maintained, instantaneous automatic gas water heaters and other water heaters to the prejudice of competitors who do not fix and require the maintenance of resale prices of their water heaters, and with the effect of eliminating competition in price among dealers in respondents' instantaneous automatic gas water heaters and other water heaters and thereby depriving the dealers of their right to sell such instantaneous automatic gas water heaters and other water heaters at such prices as they may

deem adequate and warranted by their selling efficiency, and with other effects, and that for the purpose of maintaining standard resale prices and of inducing and compelling respondents' customers to maintain and keep such standard prices respondents have for more than two years last past refused and are still refusing to sell instantaneous automatic gas water heaters and other water heaters to customers or dealers who will not agree to maintain such specified standard resale prices or who do not resell such water heaters at the specified standard selling price so fixed and determined by respondents as aforesaid.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, Ruud Manufacturing Co. and Pittsburgh Water Heater Co., and each of them, have been and now are 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 that a proceeding by it in respect to such alleged violations would be to the interest of the public, and fully stating its charges in that respect, and the respondent, Ruud Manufacturing Co., having entered its appearance by S. S. Robertson, its attorney, and the Pittsburgh Water Heater Co., having entered its appearance by Clark McKercher, its attorney, and both respondents having filed their joint answer admitting certain allegations of said complaint and denying certain others, and the attorneys for all the parties hereto having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that such statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission might forthwith proceed upon such agreed statement of facts to make and enter its report and findings as to the facts, its conclusions and its order disposing of this proceeding; the Commission having duly considered the report and being fully

advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Rudd Manufacturing Co., 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 and place of business in the city of Pittsburgh, in the State of Pennsylvania, and is now, and was at all times mentioned in the complaint herein, engaged in the manufacture of instantaneous automatic gas water heaters and other water heaters and the appurtenances thereof, and in selling and distributing such products throughout the States and Territories of the United States and the District of Columbia in direct competition with others similarly engaged.

PAR. 2. That the respondent, Pittsburgh Water Heater Co., 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 and place of business in the city of Pittsburgh, in the State of Pennsylvania, and is now and was at all times mentioned in the complaint herein engaged in the manufacture of instantaneous automatic gas water heaters and other water heaters and the appurtenances thereof, and in selling and distributing such products throughout the States and Territories of the United States and the District of Columbia in direct competition with others similarly engaged.

PAR. 3. That the quantity of such products so manufactured, sold, and distributed by said respondents is substantial, amounting to over 50 per cent of the automatic gas water heaters manufactured and sold in the United States, and forms an important item of commerce among the several States and Territories of the United States and the District of Columbia and with foreign countries.

PAR. 4. That the business of manufacturing and marketing automatic gas water heaters and the appurtenances thereof by both the said respondents has been for more than two years last past, and still is, governed and controlled in great part by the terms of an exclusive license agreement entered into by and between said respondents on or about

October 20, 1913, and by other supplementary agreements, under which each of said respondents was granted and now enjoys the exclusive right and privilege to manufacture, use, and sell certain important patented devices pertaining to gas water heaters and their appurtenances, under patents owned by the respective respondents. The validity and ownership of these patents and the rights of the respective companies under them have been settled by decrees of the Federal courts following extensive litigation between the respondent companies.

PAR. 5. That the general methods employed by both said respondents in merchandising and distributing their respective products which are manufactured under their patent license agreements are largely identical, and the various prices charged and discounts granted by both respondents are practically the same.

PAR. 6. That a very large proportion of the products of both respondents are sold directly to the trade, and in some instances to consumers, through branch offices, district managers, general agents, and other company representation. The trade to which these goods are thus sold by each of said respondents includes gas companies, gas-appliance dealers, hardware dealers, household supply stores, department stores, merchant plumbers, plumbing supply jobbers, and building operators.

PAR. 7. That in the balance of their trade, for the purpose of maintaining resale prices thereon, in certain communities where they have no company representatives, both of said respondents, and each of them by identical methods, have within two years last past made, and do now make, a practice of selling their respective products to certain dealers sometimes designated as agents or subagents to be resold to the trade or to consumers under agreements entered into between said respondents respectively and such individual dealers, whereby such dealers have been, and still are, required to agree, and do agree, with the respondent whose products they handle to resell, and such dealers have, pursuant to such agreements, usually resold said products within their territory at prices previously specified and fixed by said respondents, said prices being uniform as to the

respective products of both respondents on goods of similar types, grades, and capacities when sold to the class of customers mentioned in this paragraph; and such dealers prefer this arrangement to the exclusion of the trade of manufacturers who do not maintain said resale price policy and who compete with said respondents and on account of said arrangement said dealers do confine their trade to dealing with said respondents.

PAR. 8. That said resale prices have been, and are, fixed and specified from time to time by the respondents, pursuant to the provisions of said exclusive license agreements entered into between them as aforesaid.

PAR. 9. That said respondents sell their respective products to such dealers mentioned in paragraph 7 hereof outright at discounts, varying in the cases of different dealers from 25 per cent to 40 per cent from the list price at which such dealers are required to and do resell the same to their customers, with the result that the gross-profit margins of such dealers on such resales vary accordingly; and this variance is further augmented owing to the fact that the costs of doing business of said dealers show great divergences owing to differences in the character of their respective businesses, location of establishments, rate of turnover, efficiency of management, and selling expenses.

PAR. 10. That the agreements under which such resale prices are stipulated to be observed are usually made for one year only, and in case any dealer who has entered into such an agreement with either of the respondents fails or has failed during the term of such agreement to observe and maintain said resale prices, the respondents reserve the right to cancel such agreements and to refuse to renew the same.

PAR. 11. That the prices required to be charged by such dealers under the terms of said agreements have been, and are, the same as the current prices charged by both of the respondents for the same or similar goods when sold by them direct to the trade or to the consumer, as the case may be, through said respondent's branch offices, district managers, general agents, etc.

PAR. 12. That the tendency of the methods employed by said respondents in marketing and distributing their respec-

tive products as described in paragraph 7 hereof has been and is to eliminate competition in price in said products in the trade handling the same, and also to consumers, such as are described in paragraph 7 hereof.

CONCLUSIONS.

That 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.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, Ruud Manufacturing Co. and Pittsburgh Water Heater Co., and each of them, have been and now are 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 that a proceeding by it in respect to such alleged violations would be to the interest of the public, and fully stating its charges in that respect, and the respondent, Ruud Manufacturing Co. having entered its appearance by S. S. Robertson, its attorney, and the Pittsburgh Water Heater Co. having entered its appearance by Clark McKercher, its attorney, and both respondents having filed their joint answer admitting certain allegations of said complaint and denying certain others, and the attorneys for all the parties hereto having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that such statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission might forthwith proceed upon such agreed statement of facts to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding, and the

Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has 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, Ruud Manufacturing Co. and Pittsburgh Water Heater Co., and each of them, and their respective officers, directors, agents, and employees cease and desist from directly or indirectly, jointly or severally, recommending, requiring, or by any means whatsoever, bringing about the resale of their products or of the products of either of them, by dealers whether at wholesale or retail, according to any system of prices fixed or established by respondents or either of them, and more particularly by any or all of the following means:

1. Entering into contracts, agreements, or understandings with such dealers to the effect that such dealers, or any of them, in reselling the products of said respondents, or either of them will adhere to any system of prices fixed or established by respondents, or either of them;

2. Securing from such dealers contracts, agreements, or understandings that they or any of them, will adhere to any such system of prices;

3. Refusing to sell to any such dealers because they fail to adhere to any such system of prices;

4. Securing or seeking to secure the cooperation of such dealers, or of any of them, in maintaining or enforcing any such system of resale prices;

5. Carrying out, either jointly or severally, or causing others to carry out a resale price maintenance policy by any other means.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Dates of orders.	Docket Nos.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1916. Aug. 19	1	Abraham Goldin, Tobias Goldin, and Samuel Goldin, copartners doing business as Goldin Bros.	Mercerized cotton thread.	Misbranding.....	Answer.....	Dismissed; practice discontinued; complete remedy obtained.
1917. Nov. 15	8	Victor Talking Machine Co..	Sound-reproducing machines.	Exclusive and tying contracts.	Answer and stipulation.	Discontinued; practice discontinued, no public interest in further proceedings.
1918. Jan. 19	13	C. L. Colman Lumber Co....	Lumber and other building materials.	Price discriminations.....	Answer.....	Dismissed; respondent acted in good faith to meet competition; no tendency to substantially lessen competition or tend to create a monopoly.
1919. May 3	14	Interior Lumber Co.....	do.....	do.....	do.....	Do.
	49	N. Z. Graves Corporation....	Paints, varnish, and kindred products.	Bribery.....	do.....	Dismissed; respondent corporation dissolved and ceased to do business.
	98	J. H. Allen & Co.....	Coffee and tea.....	Giving premiums to be distributed by lot or chance.	Answer and stipulation.	Dismissed; respondent having permanently discontinued the use of the unfair method of competitions.
June 18	57	Bridgeport Wood Finishing Co.	Paints, stains, and kindred products.	Bribery.....	Answer.....	Dismissed; respondent ceased to do business.
23	94	American Tobacco Co.....	Tobacco.....	Resale price fixing and maintenance.	do.....	Dismissed; proof not sufficient to sustain allegations of the complaint.
July 9	153	Twin City Varnish Co.....	Varnish and kindred products.	Bribery.....		Dismissed; complaint issued against wrong respondent.
18	101	The Climax Coffee & Baking Powder Co.	Coffee and tea.....	Giving premiums to be distributed by lot or chance.	Answer.....	Dismissed; failure of proof.
18	103	J. S. Elliott Coffee Co.....	do.....	do.....	do.....	Dismissed; respondent not engaged in interstate commerce.
18	104	Enterprise Coffee Co.....	do.....	do.....	do.....	Do.
18	106	R. L. Gerhart & Co.....	do.....	do.....	do.....	Do.

Sept. 7	93	Atlantic Ice & Coal Corporation.	Coal and ice.....	Division of territory; threatening competitors; bogus independents; cutting prices; agreements not to compete; selling below cost; combination to fix prices.	do.....	Dismissed; proof not sufficient to sustain allegations of the complaint.
Oct. 11	142	Wilson & Co.....	Meats.....	Selling food unfit for human consumption.	Answer, trial, and stipulation.	Dismissed; failure of proof partly as to facts and partly as to wrongful intent of respondent.
1919. Feb. 24	32	United Drug Co.....	Drugs.....	Selling below cost.....	Answer.....	Dismissed without prejudice; proof insufficient; lack of public interest.
28	230	North American Linseed Products Co.	Oils, turpentine, and kindred products.	False and misleading advertising; adulteration of products; misbranding.	do.....	Dismissed without prejudice; respondent forfeited charter and ceased to do business.
Mar. 10	160	The Victor Electric Corporation.	X-Ray machines.....	False representations; suggestion to customers of certain tests of competitors' machines; acquisition of stock of competitor.	do.....	Dismissed without reasons assigned.
25	143	Morris & Co.....	Meats.....	Selling food unfit for human consumption.	Answer and trial..	Dismissed without prejudice; charges sustained, but, it appearing that respondent substituted wholesome meat in lieu of that destroyed, and there being no likelihood of a recurrence of the practice due to the demobilization of the troops at the camps, the Commission is of the opinion that an order to cease and desist would not serve a useful purpose.
Apr. 2	247	American Chicle Co.....	Chewing gum.....	Suits not brought in good faith; refusal to sell to dealers who handled competitors' products.	Answer.....	Dismissed without prejudice; no reasons assigned.
9	165	The Esterbrook Steel Pen Manufacturing Co.	Pens.....	Resale price maintenance..	do.....	Dismissed without prejudice; failure of proof.

CONFERENCE RULINGS OF THE FEDERAL TRADE COMMISSION.

1. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint it appeared that a corporation engaged in the refining and sale of cane sugar, whose principal market is in the State in which its refinery is located, alleged that a larger corporation, having refineries located in other States and disposing of its product in interstate commerce in many States, refined and sold exclusively in the State of the applicant and in competition with it sacked sugar branded "pure cane fine granulated sugar." The applicant alleged that this sugar was not a standard fine granulated sugar, as the branding led consumers as well as many in the trade to believe, but was what is known as "off" sugar, in the manufacture of which an expensive part of the refining process necessary to extract the final residue of from 2 to 3 per cent of molasses was omitted; that this "off" sugar was sold to jobbers at about 10 cents per hundred pounds less than the market price for standard granulated sugar; and that by reason of the alleged false brand or label on the sacks retailers and consumers were deceived into the belief that they were buying granulated sugar equal to standard. As a result, the applicant stated it was compelled to meet the competition of this "off" sugar in the sale of its standard fine granulated sugar, in the manufacture of which it used the complete refining process, a part of which its competitor omitted in manufacturing the "off" sugar.

Upon consideration of the above allegations, the Commission, having instituted an investigation, and shortly thereafter the corporation complained of having issued a notice to the trade announcing that it had discontinued the sale of the "off" brand of sugar, and the applicant requesting to be permitted to withdraw its application, and the corporation complained of assuring the Commission that it had discontinued the sale of sugar branded in the manner complained of and had no intention of resuming the sale of the same: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

2. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce issued a publication in which, under the guise of trade news, misinformation of a character unfair and detrimental to the applicant's business was circulated. Upon investigation by the Commission the applicant advised that the use of the alleged unfair method had been discontinued and the party complained of assured the Commission that its policy had changed with a change of management and no such practice would in the future be engaged in either against the applicant or any other competitor: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

3. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that a typewriter rebuilding company engaged in interstate commerce had circulated among dealers in various States a letter falsely stating that a competitor's

factory in the Middle West had been removed to the East, and that for this reason many of its customers in Central and Western States would make new arrangements for obtaining typewriters. The party complained of subsequently advised the Commission that the statement when made was believed to be true. It also sent a letter of retraction to all dealers receiving the first communication, and assured the Commission of its readiness to take any further action deemed necessary. The applicant, being advised of these facts, suggested that no further action be taken: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

4. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce sent out a printed circular containing an alleged letter to it by a dissatisfied customer of the applicant, disparaging the quality of applicant's product, which letter the applicant charged was fictitious. Upon investigation the Commission received assurances from the concern complained of that it had discontinued the publication of the circular in question, and that in future it would not in its advertising matter refer in any way to the products of its competitors: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

5. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that an association of wagon peddlers, competing with a jobber, had, by threats of boycott, prevailed on a manufacturer engaged in interstate commerce to refuse to sell to such jobber. Shortly after an investigation was started the Commission was advised by the jobber that the manufacturer had resumed selling to it. Assurances were also given the Commission by the manufacturer that the jobber would not in future be denied the privilege of buying from it by reason of the threatened boycott: *Held*, That the matter having been satisfactorily adjusted as between the parties, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

6. **Exclusive territory—Refusal to sell.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce, having designated an exclusive dealer in a certain local territory, refused to sell to another dealer within this territory. It further appeared that such exclusive dealer was under no obligation to refrain from dealing in the products of other manufacturers of the same commodity: *Held*, That neither the Federal Trade Commission act nor the Clayton act prohibits manufacturers selling their product exclusively through one dealer in a given territory. A refusal to sell to others in such territory, under such circumstances, is, therefore, not unlawful.

7. **Manufacturers engaged in interstate commerce, irrespective of the size of their business, and all wholesalers so engaged, subject to Clayton act.**—On inquiry: *Held*, That all manufacturers engaged in interstate commerce, irrespective of the size of their business, and all jobbers or wholesalers thus engaged, are subject to the provisions of the Clayton act.

8. **The right of one manufacturer engaged in interstate commerce to buy out a competitor, and jurisdiction of the commission in such matters.**—On inquiry as to the right of one manufacturer to buy out a competitor in the same line of business: *Held*, That the only jurisdiction of the Commission in respect of such transactions is to enforce

the provisions of section 7 of the Clayton act prohibiting the acquisition by any corporation engaged in interstate commerce of the capital stock, in whole or in part, of another corporation thus engaged where the tendency of such acquisition may be to substantially lessen competition between such two corporations, or to restrain interstate commerce, or to create a monopoly; and also possibly to enforce section 5 of the Federal Trade Commission act, if such purchase either of property or of capital stock in connection with other circumstances might constitute an unfair method of competition: *Held, also*, That the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton act or the Federal Trade Commission act.

As to the validity of such purchase of property or capital stock under the Sherman act, the Commission expresses no opinion.

9. Exclusive agency.—On inquiry by a piano manufacturer whether the following clause in a "consignment agreement" is in contravention of the Clayton Act, to wit:

Item 3. The factor shall offer, sell, or lease the pianos consigned to him by the consignor only to persons residing in the counties of ——— in the State of ———, and shall not sell nor lease, during the life of this contract, any other pianos than those consigned by the said (piano manufacturer):

Held, It appearing that the "consignment agreement" does not provide for a sale or lease of the goods of the principal to the person designated as "factor," but only for the establishment of an agency for the sale of the goods of the principal, therefore the use of such clause does not appear to be in violation of section 3 of the Clayton act.

10. Direct selling.—On application for the issuance of a complaint, it was alleged that certain mining operators were selling their product direct to consumers at wholesale prices and coercing retail dealers into handling their product, either by threats to sell or by temporary arrangements for selling their product direct to consumers. Upon investigation by the Commission, it appeared that the operators were in fact selling their product direct to consumers, but that this method of competition was not used for purposes of coercion, but was necessary in order to keep their product on the market: *Held*, That the sale by a mining operator of his product direct to the consumer is not of itself an unfair method of competition.

11. Practice—Information respecting an alleged violation of law submitted by parties not directly interested.—On inquiry: *Held*, That the fact that a party complaining to the Commission has no direct interest and acts without specific authority from the parties alleged to be injured will not prevent the Commission from taking action if the matter presented is one properly within its jurisdiction. It is the evident purpose of the law that action by the Commission should be taken regardless of the source of its information when it has reason to believe that there is a violation of a law which it is empowered to enforce, and that a proceeding by it in respect thereof would be to the interest to the public.

12. Public interest—Violation of State statutes.—On application for the issuance of a complaint it appeared that the commissioners of a certain county had appointed an employee of a bridge company to the position of county civil engineer, and that this situation made it possible for the company to secure information respecting the letting of bridge work which was not available to competing companies. It appeared that the State law prohibits such engineer from being interested, directly or indirectly, in any contract for the construction of bridges under his supervision: *Held*, That as the condition complained

of may be corrected by resort to a State statute a proceeding will not be instituted in the absence of important considerations of public interest.

13. Exclusive territory.—On inquiry by a manufacturer whether section 3 of the Clayton act is violated by a contract containing the following clause:

In consideration of exclusive sale of your goods in _____ from date of this contract to March 1st, 191—, _____ agree to neither sell your goods outside of the territory heretofore reserved to _____, directly or indirectly, under penalty of paying all damages resulting from a violation of this clause and cancellation of this contract at the option of the manufacturer; nor to countermand this order except on payment to _____ Manufacturing Co., as liquidated damages, 20 per cent of the net amount of goods hereby purchased:

Held, That section 3 of the Clayton act does not prohibit manufacturers selling their product exclusively through one dealer in a given territory and requiring the dealer not to sell their product outside of the territory assigned.

14. Refusal to sell.—On application for the issuance of a complaint, it appeared that certain manufacturers, pursuant to their established sales policy of selling only to local retail dealers, refused to sell to the applicant, a retail dealer doing business principally by mail, a certain commodity for shipment direct from the mills to consumers in a State where the applicant maintained no place of business. On investigation by the Commission it appeared that there was no agreement or understanding among the manufacturers complained of to prevent the applicant or others doing a similar business, by refusal to sell or otherwise, from securing this commodity, nor did it appear that such manufacturers had been coerced or intimidated by retailers affected by the competition of the applicant: *Held*, That under the circumstances a refusal of a manufacturer to sell to the applicant for direct shipment from the mill to territory covered by local dealers is not a violation of any law which the Commission is authorized to enforce. Whether a refusal to sell under other circumstances is contrary to the provisions of the Clayton act or the Federal Trade Commission act the Commission does not now decide.

15. Exclusive agency—Exclusive territory—Refusal to sell.—On application for the issuance of a complaint, it appeared that several manufacturers, having appointed exclusive agents or distributors in a given place, refused to sell to another dealer at the same point: *Held*, That neither the Clayton act nor the Federal Trade Commission act prohibits manufacturers establishing exclusive agencies or assigning exclusive territory to dealers. Under such circumstances a refusal to sell to others than such agents or distributors is not unlawful under these acts.

16. Practice—Charge not sustained on investigation.—On application for the issuance of a complaint, it was charged by a packer of canned clams that a competitor, in order to drive the applicant out of business, bid up the price of fresh clams to such an extent as to make the business unprofitable. The applicant, when requested, failed to submit further information, and an investigation by the Commission did not substantiate the charges made: *Held*, That the Commission, having no reason to believe that the party complained of has been or is using the alleged unfair method of competition, will not proceed further.

17. Corporate name—Private rights—Public interest.—On application by a corporation for the issuance of a complaint, it was alleged that one of its stockholders, whose name had been adopted by the appli-

cant as part of its corporate name, had formerly been a stockholder in a competing corporation and had then permitted the latter to use his name as part of its corporate name, but that after the withdrawal of said stockholder from the competing corporation it had, in violation of an alleged agreement between one of its officers and said stockholder, retained his name in its corporate name, to the injury of the applicant: *Held*, That as the application presents questions concerning purely private rights, in which the interest of the public is quite remote and indirect, it does not appear to the Commission that a proceeding in respect thereof would be to the interest of the public.

18. **Refusal to sell—Exclusive agency.**—On inquiry: *Held*, That the Clayton act does not prohibit manufacturers establishing exclusive sales agencies in certain territory and selling their product in such territory only through such agencies. A refusal to sell to others in such territory, where such agency has been established, is therefore not unlawful. Whether a mere refusal to sell under any circumstances is contrary to the provisions of the Clayton act or the Federal Trade Commission act the Commission does not now decide.

19. **Pipe lines—Jurisdiction.**—On application for the issuance of a complaint as to methods of a pipe line for the transportation of oil between the States: *Held*, That the Commission has no jurisdiction in the premises, and that the matter should be referred to the Interstate Commerce Commission.

20. **Exclusive territory—Refusal to sell.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce assigned exclusive territory to jobbers of his product in various States and refused to sell to the applicant, a competing jobber: *Held*, That the Federal Trade Commission act and the Clayton act do not prohibit manufacturers selling their product exclusively through one dealer in a given territory. A refusal to sell to others in such territory under such circumstances is therefore not unlawful. Whether a mere refusal to sell under any circumstances or for any reason is contrary to the provisions of the Clayton act or the Federal Trade Commission act the Commission does not now decide.

21. **Exclusive agency—Exclusive territory—Refusal to sell.**—On application for the issuance of a complaint, it appeared that a manufacturer, engaged in interstate commerce, having selected an exclusive agent or distributing dealer in certain territory, refused to sell to another dealer within this territory: *Held*, That neither the Federal Trade Commission act nor the Clayton act prohibits manufacturers establishing exclusive agencies or assigning exclusive territory to dealers. Under these circumstances a refusal to sell to others than such agents or distributors is therefore not unlawful under these acts.

22. **Railroads—Jurisdiction.**—On application for the issuance of a complaint as to abandonment by an interstate railway company of part of a branch line and its purpose to abandon more of it: *Held*, That the Commission has no jurisdiction of the subject matter of this complaint.

23. **Interstate commerce—Jurisdiction.**—On inquiry whether a local merchant in offering an automobile free to the customer drawing a specified number is practicing an unfair method of competition: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the act complained of is unlawful.

24. **Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, a retail dealer alleged that a competitor, engaged

in business in the same city, sold goods below the price at which the applicant could purchase them: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

25. **Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, it appeared that a retail dealer was selling a well-known make of underwear much below the customary price, to the injury of a jobber in the same city who sold these goods to the local retail trade: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

26. **Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, it appeared that two competitors of the applicant, located in the same city, sold lumber below cost. The sales of all parties at interest were confined wholly within one State: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

27. **Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, it was alleged by a retail dealer that other dealers in the community were using unfair methods in competition with him: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the methods complained of are unlawful.

28. **Banks—Jurisdiction.**—On inquiry respecting the refusal of banks to lend money on a particular kind of collateral: *Held*, That the facts do not present a case within the jurisdiction of the Commission, banks being expressly excepted from the provisions of section 5 of the Federal Trade Commission act.

29. **Practice where suggestion of violation of decree of Federal court is made.**—On application for the issuance of a complaint, it appeared that the practice complained of might be in violation of a decree against the party charged with these practices, which decree was entered in a Federal court: *Held*, That the matter should be, in this instance, referred by the Commission to the Department of Justice. Each matter of this kind will be disposed of upon its own facts.

30. **Jurisdiction—Deprivation of rights by municipal ordinance.**—On inquiry: *Held*, That the Commission has no jurisdiction to pass upon the claim of an electrical engineer that, by town ordinance, his right there to carry on his work is unduly abridged.

31. **Interstate commerce—Jurisdiction—Refusal to sell.**—On inquiry: *Held*, That where a jobber or manufacturer refuses to sell to a retailer in the same State, and no interference with interstate commerce appears to be involved, the Commission has no jurisdiction to act in the premises.

32. **Interstate commerce—Labor unions—Jurisdiction.**—On application for the issuance of a complaint respecting the enforcement of certain local labor-union rules: *Held*, That, as the labor union is not engaged in commerce, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

33. **Refusal to manufacture and sell—Competition—Jurisdiction.**—On application for the issuance of a complaint, it appeared that a company engaged in the manufacture of bottle crowns refused to make certain crowns for the applicant, assigning as the reason that the crowns ordered would constitute an infringement of the trademark of another customer, a competitor of the applicant. It did not appear that the refusal complained of was induced by the competitor:

Held, That, as the facts do not disclose a method of competition, the Commission is without jurisdiction to act in the premises.

34. Interstate commerce—Jurisdiction.—On application for the issuance of a complaint, it appeared that the proprietors of certain small coal mines refused to sell to a retail dealer in the immediate vicinity except through a competing dealer and, through the purchase of other near-by mines, cut off his supply of coal: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

35. Interstate commerce—Jurisdiction.—On application for the issuance of a complaint, it appeared that a retail dealer competing with the applicant, both doing business only within the State, discriminated in price between different localities in the sale of a commodity: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

36. Procedure—Combinations in restraint of trade.—On application for the issuance of a complaint, suggesting unlawful combinations by companies engaged in interstate commerce in restraint of such commerce, no unfair method of competition being alleged: *Held*, That the matter thus involved should be referred to the Department of Justice.

37. Clayton act—Section 3—Pending litigation.—On application for the issuance of a complaint, alleging a violation of section 3 of the Clayton act, where it appeared that the party complained of is the defendant in a suit brought by the Department of Justice, involving the same questions of law and fact: *Held*, That a proceeding by the Commission at this time would not be to the interest of the public.

38. Interstate commerce—Jurisdiction—Competition.—On application for the issuance of a complaint, it appeared that a retail dealer, doing business wholly within one State, advertised the product of the applicant, a manufacturer engaged in interstate commerce, at less than the price at which the latter sold it at wholesale: *Held*, That, as in this instance, the method of competition complained of is used by a concern engaged solely in intrastate commerce, and only against local competitors not engaged in interstate commerce, the Commission has no jurisdiction.

39. Manufacture and sale of repair parts—Unpatented articles.—On application for the issuance of a complaint, it appeared that certain foundrymen made and sold repair parts for stoves manufactured by the applicant. It was not claimed that the stoves were patented or that the foundrymen led the public to believe that the parts were made by the applicant: *Held*, That under such circumstances the making and selling of repair parts for unpatented articles, by others than the original manufacturer, is not a violation of section 5 of the Federal Trade Commission act.

40. Interstate commerce—Local boycott—Jurisdiction.—On application for the issuance of a complaint, it appeared that certain advertisers in a local newspaper, and some of its subscribers, all apparently residing in the community where it was published, combined together and threatened to withdraw their patronage unless the management of the paper changed its policy: *Held*, That the facts alleged do not disclose the violation of any law which the Commission has jurisdiction to enforce.

41. Price discrimination by absorption of freight charges—Alleged discrimination discontinued—Clayton act.—Upon application by a corporation engaged in the manufacture on the Pacific coast of sanitary enameled ironware, for the issuance of a complaint for violation of section 2 of the Clayton act, it was alleged by the applicant that a competitor whose factories were located in the East was selling cer-

tain of its goods on the Pacific coast at a lower price than it was selling the same goods in other parts of the country, cost of transportation being considered, and that this discrimination in price was made for the purpose of, and would, if continued, have the effect of injuring or destroying the business of the applicant. Upon investigation by the Commission it appeared that, previous to the time the applicant entered into active competition with it, the corporation complained of sold its products in Pacific coast territory at its eastern prices and absorbed a portion of the freight charges, the balance of the freight charges being paid by the purchaser. After the applicant had established its business and entered into active competition with it the corporation complained of adopted the policy of selling certain staple articles, in which there was competition from the applicant, at a delivered price, absorbing all freight charges. The effect of such freight absorption by the corporation complained of was to make the price charged by it for these staple articles in the territory where the applicant competed with it substantially lower than the prices charged by it for the same articles in territories where the applicant did not compete with it. Before the completion of the investigation the corporation complained of notified the Commission that it had adopted a new price list for the Pacific coast. It further appeared that, after the application was made to the Commission and while the investigation was in progress, there had been a substantial reduction in railroad rates on shipments of enameled ironware to the Pacific coast. The new price list, considered together with this reduction in freight rates, brought the Pacific coast prices of the corporation complained of substantially to the level of the prices charged by it for the same articles in territory where the applicant did not compete with it, and, according to a statement filed with the Commission by the applicant, thereby removed his cause of complaint: *Held*, That while the Commission is authorized to issue a complaint where it shall have reason to believe that any person is violating or has violated any of the provisions of section 2 of the Clayton act, it does not consider it necessary or advisable in the present case to issue such complaint, since the discrimination complained of has been discontinued.

42. Refusal to sell—Adjustment between parties—Pendency of suit by Government.—On application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce in the manufacture and sale of sirups refused to sell its products to a wholesale grocer in another State because this grocer advertised and sold these products at prices lower than those made by other jobbers, which conduct was unsatisfactory to the manufacturing company. After the Commission had instituted an investigation, but before its completion, the complaining party notified the Commission that the matter had been amicably adjusted to its entire satisfaction, and that it desired that the application should be dismissed. It also appeared that there is pending a suit filed by the Government against the manufacturing corporation, brought under the Sherman Antitrust act: *Held*, That under all the circumstances, the matter having been thus satisfactorily adjusted as between the parties, and the Government having brought suit under the Sherman act, it does not appear to the Commission that a complaint should be issued.

43. Price discrimination—Agency.—On application of a jobber for iron pipe for the issuance of a complaint for violation of section 2 of the Clayton act, it was alleged that a manufacturer of such pipe discriminated in prices of such product in favor of a certain large jobber. Upon investigation of such charges, it appeared that such jobber sold the product of the manufacturer at prices fixed by the manufacturer under a contract of agency on a commission basis: *Held*,

That as the contract was not one of sale but of agency it does not come within the provisions of section 2 of the Clayton act.

44. **Discrimination—Charges not sustained on investigation.**—On application for the issuance of a complaint, it was charged that a company engaged in the manufacture and sale in interstate commerce of paving brick discriminated in price between purchasers in different cities and between different purchasers in the same city. Upon investigation the concern complained of denied the practices charged, and the Commission was unable to obtain any evidence sustaining the charges: *Held*, That the Commission, having no reason to believe that the party complained of has been or is practicing the alleged discrimination, will not proceed further, and the application is therefore denied.

45. **Refusal to supply films to more than one exhibitor in same city.**—On application for the issuance of a complaint, it was alleged that a motion-picture distributing company refused to supply the applicant with films on the ground that another exhibitor in the same city had been given the exclusive right to exhibit the films of the distributing company: *Held*, That under ordinary circumstances, and in the absence of intent thus to accomplish an unlawful purpose, neither the Federal Trade Commission act nor the Clayton act prohibits a corporation dealing exclusively with one firm in a given territory. Upon the facts presented a refusal to supply others in such territory is therefore not unlawful.

46. **Infringement of registered trade-mark—Public interest.**—On application for the issuance of a complaint, it was alleged that *certain registered* trade-marks of the applicant were being infringed. It appears that Congress has provided a special Federal remedy for the redress of alleged infringements of registered trade-marks (sec. 17, Trade-Mark Act, 33 U. S. Stats. at Large, 775; and par. 7, sec. 24, Judiciary Act, 36 U. S. Stats. at Large, 1092) whereby unusual advantages are given a complainant by being permitted to bring suit in a Federal court irrespective of citizenship of parties or of amount of damages sought: *Held*, That where the conditions complained of involve nothing more than a question of infringing *registered* trade-marks, a proceeding will not be instituted in the absence of important considerations of public interest.

47. **Misbranding—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that the applicant was engaged in manufacturing an article in which deer hair is used, and selling the same in interstate commerce, and that a competitor manufactured and sold similar articles marked "100% Deer Hair," whereas in fact they contained approximately 50 per cent goat hair which was worth considerably less than deer hair. After an investigation by the Commission the company complained of discontinued the practice and assured the Commission that it would not be resumed. In view of the fact that the practice complained of has been permanently discontinued, it is *Held*, That further action by the Commission would not be to the interest of the public.

48. **Unfair competition—Refusal to sell.**—On application for the issuance of a complaint, it was alleged that a corporation engaged in the manufacture and sale of goods in interstate commerce refused to sell to the applicant certain commodities manufactured by it. It was further alleged that this refusal to sell was made at the direction of an officer of the corporation complained of, who was also the president of another corporation competing with the applicant. On investigation it appeared that the refusal to sell was made on personal grounds and was not made for the purpose, and did not have the effect of restraining interstate commerce: *Held*, That a refusal to

sell, made solely for personal reasons, without the purpose or effect of restraining interstate commerce, is not a violation of any law which the Commission is authorized to enforce.

49. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Oxford and Cambridge Silks," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "Oxford and Cambridge Silks" in fact contained only 15 per cent genuine, or cocoon, silk and 85 per cent of other material, and that such manufacturer advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed its brand of such goods from "Oxford and Cambridge Silks" to "Oxford and Cambridge Drapery Fabrics," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public;

Held, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Oxford and Cambridge Silks" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public and thereby injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent, having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

50. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "St. Regis Silk," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "St. Regis Silk" in fact contained no genuine or cocoon silk, and that such manufacturer advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now discontinued the manufacture of the goods formerly labeled "St. Regis Silk," and that respondent has also taken steps permanently to discontinue all other

methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

Held, That such practice of labeling, advertising, and selling in interstate commerce fabrics advertised and labeled as "St. Regis Silk," when in fact the fabrics complained of contain no genuine or cocoon silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

51. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Silk Armure" and "50-inch Silk Armure," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation and after informal conference with the respondent it appeared that the fabrics labeled as "Silk Armure" in fact contained only 20 per cent genuine, or cocoon, silk and 80 per cent of other material; that the fabrics labeled "50 inch Silk Armure" contained only 22 per cent genuine, or cocoon, silk and 78 per cent of other material; and that such manufacturer advertised and sold each of said fabrics generally, in interstate commerce, under such respective labels; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to co-operate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed the labels of such fabrics from "Silk Armure" and "50-inch Silk Armure" to "Armure," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

Held, That such practice of labeling, advertising, and selling in interstate fabrics advertised and labeled as "Silk Armure" and "50-inch Silk Armure" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is in each instance an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

52. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint,

It was alleged that a manufacturer labeled certain fabrics as "Palermo Silk" and "Mantua Silk," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "Palermo Silk" and "Mantua Silk" in fact contained only 28 and 23 per cent, respectively, of genuine, or cocoon, silk and 72 and 77 per cent, respectively, of other material, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such labels; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed the labeling of such fabrics from "Palermo Silk" to "Palermo Lining," and from "Mantua Silk" to "50 in. Mantua," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

Held, That such practice of labeling, advertising, and selling in interstate commerce, fabrics advertised and labeled as "Palermo Silk" and "Mantua Silk" without qualifying terms which correctly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine silk, is in each instance an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics:

Held further, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

53. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Toyama Silk," which, in fact, were not genuine silk, and that such manufacturer advertised and sold said fabrics generally, under such labeling, in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the fabrics labeled as "Toyama Silk" in fact contained only 29 per cent genuine, or cocoon, silk and 71 per cent of other material, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed the labeling of such fabrics so that the word "silk" is eliminated therefrom, and that respondent has also taken steps permanently to discontinue

all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

Held, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Toyama Silk" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That, respondent having taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

54. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that selling agents labeled certain fabrics as "Savoy Washable Art Silks," which in fact were not genuine silk, and that such selling agents advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation and after informal conference with the respondent, it appeared that the goods labeled as "Savoy Washable Art Silks" in fact contained only 29 per cent genuine, or cocoon, silk and 71 per cent of other material, and that such selling agents advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondents are ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondents have now discontinued the use of said label, and that respondents have also taken steps permanently to discontinue all other methods of labeling and advertising used by them which may be unfair to competitors or may deceive the consuming public:

Held, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Savoy Washable Art Silks" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act in that such practice is calculated to deceive the consuming public and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondents having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

55. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Agra Silk," which in fact were not genuine silk, and that such manufac-

turer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "Agra Silk" in fact contained only 15 per cent genuine, or cocoon, silk and 85 per cent of other material, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed its brand of such goods from "Agra Silk" to "Agra Cloth," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public: *Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Agra Silk" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act in that such practice is calculated to deceive the consuming public and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

50. Misbranding—Misleading labeling and advertising—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that manufacturers labeled certain threads, no one of which contained any silk, respectively, as follows: "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread, and that such manufacturers advertised and sold such threads under such labeling in interstate commerce.

Upon investigation it appeared that no one of the threads labeled as "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread in fact contained any genuine or cocoon silk, and that such manufacturers advertised and sold said threads generally in interstate commerce under such labels; and

It appeared further that such practice of using fanciful words, of which the letters s-i-l-k constituted a part, may have grown up (as alleged by respondents) as a result of the necessity of meeting competitively like practices by others; and

It appeared further that whatever possible confusion and deception resulted were without any specific intent on the part of the respondents; and

It appeared further that respondents voluntarily took steps promptly to correct every possible confusion and deception that might result from such practice; and

It appeared further that respondents have now permanently changed each of the labels complained of by placing the fanciful words within quotations and by adding thereto certain words in conspicuous letterings, as follows: From "Sansilk" to "Sansilk" mercerized crochet cotton; from "Silkateen" to "Silkateen" mercerized crochet

cotton; from "Silkateen" darning floss to "Silkateen" mercerized cotton darning floss; from "Silkine" crochet to "Silkine" crochet cotton; from "Silkine" art thread to "Silkine" art thread mercerized cotton:

Held, That such practice of labeling, advertising, and selling in interstate commerce threads labeled as: "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread without the use of qualifying terms clearly indicated that such threads were not composed of silk, when in fact they contained no silk, is, even in the absence of specific intent, an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act: *Held further*, That respondents having promptly and voluntarily agreed and taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all further possible deception and injury to the trade and the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

57. Use of similar corporate name—Competitive method discontinued—Public interest.—Upon application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce adopted in 1901 the corporate name "National Oil & Supply Company," and that another corporation engaged in interstate commerce adopted in 1916 the identical name. It further appeared that, while located in different cities, these corporations were selling the same class of goods in the same markets, and the use of the identical corporate name was resulting in confusion and deception of the public. The Commission took up the subject matter of the application with the corporation last adopting the name "National Oil and Supply Company," which voluntarily agreed to discontinue the use of the name and to adopt in lieu thereof the name "U. S. Oil and Supply Company": *Held*, (1) The use by a corporation of a corporate name consisting of a combination of several generic and descriptive words, in the identical form or combination previously adopted by a corporation engaged in the manufacture and sale of the same class of goods in the same market, is an unfair method of competition in that it is calculated to deceive the public and thereby result in injury to the competitor previously adopting the name. (2) The use of the name "U. S. Oil and Supply Company" does not constitute an unfair method of competition as against the *National Oil & Supply Company*. (3) The practice complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

58. Infringement of copyright law—Public interest.—On application for the issuance of a complaint for a violation of section 5 of the Federal Trade Commission act, it appeared that the applicant had secured a copyright for an illustrated book containing photographs, drawings, and descriptions of his product, and that a competitor of the applicant had copied plans and photographs and used them in its own catalogue. It appears that Congress has provided a special Federal remedy for the redress of alleged infringements of copyrights (U. S. Rev. Stats., sec. 4965) whereby unusual advantages are given a complainant by being permitted to bring suit in a Federal court irrespective of citizenship of parties or the amount of damages sought: *Held*, That where the conditions complained of involve nothing more than a question of infringing copyrights, a proceeding will not be instituted in the absence of important considerations of public interest.

59. Use of competitor's name—Public interest—Jurisdiction taken by courts.—On application for the issuance of a complaint, it appeared that the applicant was a corporation engaged in the business of buying,

selling, repairing, and dealing in typewriters. The concern complained against, engaged in the same business, was charged with having adopted a firm name similar to that of the applicant, and by this and other means endeavoring to mislead the public and injure the applicant's business. The investigation revealed the fact that the applicant had begun a proceeding in the courts to restrain its competitor from continuing the acts complained of, and that a temporary restraining order had been issued in its favor: *Held*, That it does not appear to the Commission that a proceeding by it at this time in respect thereof would be to the interest of the public.

60. Interstate commerce—Jurisdiction.—On application for the issuance of a complaint, it was alleged that advertisements of attorneys practicing before the United States Patent Office at Washington are in many instances false or misleading, and that in other respects the methods of some of these attorneys are unfair and injurious to others in the profession: *Held*, That the practice of attorneys before the United States Patent Office is not commerce, either between the States or within the District of Columbia, and that therefore the Commission is without jurisdiction in the premises.

61. Espionage—Use of secret processes—Litigation pending—Public interest.—On application for the issuance of a complaint, it appeared that both the applicant and the party complained against were engaged in manufacturing by secret processes and formulae products which they shipped in interstate commerce. The investigation showed that the party complained against had employed a spy who spent over four months in the employment of the applicant, reporting to the party complained against each week. It was charged by the party complained against, on the other hand, that the applicant had enticed away its employees and thereby learned its secret processes and formulae. The applicant had filed a bill in the Federal courts praying for a writ of injunction to enjoin and restrain the practices complained of, and the party complained against had filed an answer thereto: *Held*, That it does not appear to the Commission that a proceeding by it at this time in respect thereof would be to the interest of the public.

62. Fighting brand—Sales below cost—Charges not sustained.—On application for the issuance of a complaint, it was alleged that a manufacturer and vendor of an article of interstate commerce had placed upon the market a "fighting brand" which was substantially the same as its trade-marked article; that the "fighting brand" was sold only in territory wherein competition existed and at a price below actual cost of production, and that the price of the standard trade-marked article was also reduced to a figure below actual cost. Upon investigation it appeared that the price at which the manufacturer complained against sold standard trade-marked and the alleged "fighting brand" of the article showed the manufacturer a substantial profit on both articles; furthermore, the charge of selling the alleged "fighting brand" only in competitive territory and for the purpose of embarrassing a competitor was not sustained, it appearing that the article was sold to supply a local demand which did not exist elsewhere: *Held*, That the transactions disclosed by the investigation in this case do not constitute an unfair method of competition within the purview of section 5 of the Federal Trade Commission act.

63. Misbranding—Competitive method discontinued.—On application for the issuance of a complaint by a manufacturer of men's clothing against another such manufacturer, it was alleged that clothing fabrics were offered to the public as "all wool" when, in fact, they contained large and varying amounts of cotton. Investigation and analysis of samples of the cloth sustained the allegation, and upon being advised of the facts the manufacturer complained against agreed permanently to discontinue the use or application of any brand,

label, description, statement, or other indication, direct or indirect, which might lead the public to believe the product to be all wool, except when it was in fact all wool: *Held*, That while misbranding of goods is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act, yet the manufacturer complained against in this case, having agreed permanently to discontinue the acts complained of, and the public interest being safeguarded, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

64. Refusal to sell because of bona fide credit considerations.—On application for the issuance of a complaint, it was alleged by a wholesale merchant that he had been responsible for the introduction of a manufacturer's product in a certain territory and that for several years past he had purchased large quantities of said product, and that recently the manufacturer had refused to sell to him at prices allowed other merchants in applicant's territory. On investigation by the Commission, it appeared that the manufacturer had refused to sell to the applicant solely because of bona fide considerations of credit; *Held*, That a refusal by a manufacturer to sell to a wholesaler solely because of bona fide credit consideration is not an unfair method of competition within the purview of section 5 of the Federal Trade Commission act.

65. Use of similar corporate name—Competitive method discontinued—Public interest.—On application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce adopted in 1901 the corporate name "National A and B Company," and that another corporation engaged in interstate commerce adopted in 1916 the identical name. It further appeared that, while located in different cities, these corporations sold the same class of goods in the same markets, and the use of the identical corporate name resulted in confusing and deceiving the public. The Commission took up the subject matter of the application with the corporation last adopting the name "National A & B Company," which voluntarily agreed to discontinue the use of the name and adopted in lieu thereof the name "U. S. A & B Company": *Held*, (1) That the use by a corporation of a corporate name, consisting of a combination of several generic and descriptive words, in the identical form or combination previously adopted by a corporation engaged in the manufacture and sale of the same class of goods in the same market, is an unfair method of competition in that it is calculated to deceive the public and thereby result in injury to the competitor previously adopting the name; (2) that the use of the name last adopted does not constitute an unfair method of competition as against the National A & B Company; (3) that the practice complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

66. Refusal to sell.—On application for the issuance of a complaint, it was alleged that certain corporations engaged in the manufacture and sale of goods in interstate commerce refused to sell to the applicant for cash, certain commodities manufactured and sold by them, for the reason that such applicant had failed to pay for certain other commodities previously purchased, the undisputed accounts being long past due: *Held*, That a refusal to sell based upon the failure of the intending purchaser to pay past-due accounts for goods previously purchased is not a violation of any law which the Commission is authorized to enforce.

67. Cooperative purchasing—Price discrimination—Exclusive dealing.—On application for the issuance of a complaint, and after investigation by the Commission, it appeared that three purchasing agents, who for the most part placed their orders directly with manufac-

turers of mill supplies, represented a large number of cotton mills; that these agents were paid by the mills they represented according to the number of spindles operated, the compensation, however, being not less than a fixed amount per month; that these agents would represent any reputable mill on these terms; that supplies ordered by these agents were shipped by the manufacturers directly to the mills; and that the latter, and not the purchasing agents, were financially liable for such shipments. It further appeared that discounts were made by manufacturers on orders received through these purchasing agents; that these discounts were in most cases equal to jobbers' discounts and that they were allowed on account of the quantity purchased through such agents; that they were given when the orders were billed by the manufacturers; that they were given to the mills and not to the agents; and that to this extent these mills received better treatment than mills not represented by purchasing agents, although mills so represented were on an equal footing. It also appeared that the purchasing agents and manufacturers had made contracts providing for special discounts in consideration of exclusive dealing, but that these contracts were no longer in general use and were being abandoned, and there was no evidence that the remaining contracts of this character might substantially lessen competition or tend to create a monopoly. The Commission's investigation also failed to disclose evidence that the purchasing agents compelled manufacturers to quote prices which were not consistent with the cost of doing business or the cost of the goods: *Held*, (1) That the cooperation of textile mills, for the purpose of securing trade discounts, in the manner and to the extent disclosed in the record in this case does not constitute a violation of section 5 of the Federal Trade Commission act or section 2 of the Clayton act. Whether, under other circumstances, such as a consolidation of the purchasing agencies so that there would be but one outlet for manufacturers, or an arbitrary exclusion of competitors from the benefits of collective buying, there would be a violation of law, the Commission does not decide; (2) that since contracts for exclusive dealing are being discontinued, and since it does not appear that the effect of the unexpired exclusive contracts may be substantially to lessen competition or tend to create a monopoly, such contracts are not in violation of section 3 of the Clayton act.

68. Imitation of trade name—False advertising.—On application for the issuance of a complaint, a manufacturer of a cola drink, sold under the registered trade-mark "Coca Cola," alleged that the manufacturer of a similar drink sold under the trade name "Kel Kola" was using unfair methods of competition in that: (1) Its use of the name "Kel Kola" was per se unfair; and (2) it had published advertisements in various newspapers containing an alleged false statement that "On May 22 the Supreme Court of the United States decided that Coca Cola was adulterated and misbranded." On investigation of the first charge, it appeared that the word cola (or kola) as applied to beverages is descriptive of a class of beverages supposed to contain caffeine extracted from the seeds of the cola nut. Cola beverages have been known for years in foreign countries, and numerous cola drinks sold under trade names containing the word "cola" or "kola" singly or in combination with other words or arbitrary terms have been on the market in this country for many years, some of them being widely advertised and generally known to the consuming public in various portions of the country. The word cola (or kola) therefore is descriptive, is in common use, and is known to the public as identifying a class of goods and not the goods of any particular manufacturer. It can not be appropriated exclusively by any manufacturer. Aside from the word "kola," the trade name "Kel

Kola" bears no deceptive resemblance to the words "Coca Cola." On investigation of the second charge, it appeared that the party complained of had published the advertisements as alleged. It appeared further that the statement in such advertisement was deceptive and misleading. The manufacturer complained against agreed permanently to discontinue the use of such advertisements: *Held*, (1) That the use of the trade name "Kel Kola" of itself and in the absence of any evidence as to simulation in dress and other facts showing that the use of the name is calculated to deceive the public does not constitute an unfair method of competition as against the manufacturer of the beverage "Coca Cola." Whether or not the use of such trade name is an infringement of the registered trade-mark "Coca Cola" the Commission does not decide, Congress having provided a special Federal remedy for the redress of alleged infringement of registered trademarks, and there being no important element of public interest involved in this case (see Conference Rulings 46 and 58); (2) that the use of the advertisement complained of is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (5) That the company complained of having agreed permanently to discontinue the use of such statements in its advertisements, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

69. Misrepresentation—Unfair practice discontinued.—On application for the issuance of a complaint, it was alleged that a company engaged in the sale in interstate commerce of paints and glass was falsely representing to the trade through its traveling salesmen (1) that it had taken over the business of the applicant company, and (2) that the applicant had gone out of business. Upon investigation, it appeared that such representations had been made and that they were untrue. Upon being advised of the character of the complaint the responsible officers of the respondent company denied that representations of the character complained of had been made at their direction or with their knowledge and agreed that in future they would not themselves make any such statements nor permit their salesmen to do so. They immediately wrote their salesmen directing that no statements of the character complained of should be made in the future and also printed and distributed to the trade a circular designed to correct the false impression created by the statements of its representatives: *Held*, (1) That such practice of false representation is an unfair method of competition, and (2) that the company complained of having discontinued the practice and having taken steps to eradicate the false impression created by the representations complained of, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

70. Interstate commerce—Jurisdiction.—On application for issuance of a complaint it appeared that certain newspapers had refused to accept for publication advertisements tendered by applicant which related to a service to be performed by applicant for a small consideration, which service, it was claimed, would have the effect of enabling a purchaser of real estate to deal directly with the owner, thereby avoiding the payment of the usual agent's commission; that such refusal was induced by real estate dealers operating in the cities where the newspapers were published, who threatened to withdraw their advertising patronage from said newspapers unless the advertisements of the applicant were refused: *Held*, (1) That neither the applicant nor the real estate dealers (who, it is alleged, induced the newspapers to refuse to publish the advertisements of the applicant) are engaged in interstate commerce; and (2) that as the effect on the interstate commerce of the newspapers by the exclusion of the applicant's advertis-

ing would at most be indirect, remote, and secondary, the Commission is without jurisdiction in the premises.

71. Discrimination—Discounts based on difference in cost of selling.—On application for the issuance of a complaint, it appeared that a wholesale grocery company offered, in territory not reached by its own salesmen but traversed by salesmen of other wholesale grocers, to effect savings to retailers of "over 3% and perhaps 5% or 6%" on all orders for groceries sent in by mail. It was alleged that this offer was unfair to other wholesale grocers selling through salesmen in the territory in which said offer was made. On investigation by the Commission it appeared that the discounts given on the mail-order business exceeded only slightly, if at all, the saving to the concern making the offer by the elimination of the expense of maintaining a force of traveling salesmen: *Held*, That the discrimination in price, being one that makes only due allowance for difference in the cost of different methods of selling, is not in violation of section 2 of the Clayton act; and (2) that an offer to decrease the price of goods ordered through the mails by an amount equal to the difference in the cost of selling as compared with those purchased through traveling salesmen, is a discrimination based upon greater economy and efficiency in distributive methods and not an unfair method of competition within the purview of section 5 of the Federal Trade Commission act.

72. Misbranding—Misleading label—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a merchant was selling in interstate commerce a certain fabric labeled "Army & Navy 8 oz. Standard Duck," and that the brand was misleading in that the fabric was a single filling duck, while both the Army and Navy standard ducks are twisted warp and twisted filling. Upon investigation it appeared that the fabric in question did not conform to either the Army or Navy standards for this class of goods. It appeared, further, that when the matter was called to the attention of the merchant and of the manufacturer who had made and branded the goods, the former did not own any of the goods so branded, and had instructed the manufacturer permanently to cease using the brand on goods made for him; and the latter did not have any of the goods on hand, and the manufacturer agreed with the Commission not to use the brand at any time in the future: *Held*, (1) That such practice of labeling and selling in interstate commerce goods labeled as "Army & Navy 8 oz. Standard Duck," when, in fact, such goods do not conform to the requirements of either the Army or Navy standards, is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; and (2) that the merchant and manufacturer, respectively, having taken steps permanently to discontinue all unfair methods of competition in the matters complained of, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

73. False and misleading advertising—False and misleading statements regarding competitors—Competitive method discontinued.—On application for the issuance of a complaint, it was alleged that a concern manufacturing a toilet preparation was engaged in unfair methods of competition in that it was (1) advertising in a false and misleading manner by (a) quoting excerpts from an alleged article of indorsement by a daily newspaper when, in fact, such article was a paid advertisement; (b) quoting, without date, excerpts from various publications indorsing the manufacturer's preparation, whereas, in fact, such publications no longer indorsed the product; and (2) making disparaging and misleading statements impugning the integrity of the applicant and other competitors.

On investigation it appeared that the manufacturer was engaged in the practices charged. The article of indorsement in question was

published as reading matter at the regular advertising rate prior to the passage of Thirty-seventh United States Statutes at Large, page 554, making such a publication unlawful unless marked "Advertisement." The newspaper did not at the time the application was made indorse the said preparation, but refused to accept the manufacturer's advertising. The manufacturer assured the Commission that it would in the future publish the date of the article in question whenever it or any excerpt therefrom was used and would accompany it with the statement, "There was paid for the publication of this article \$2,240."

The undated excerpts quoted from other publications were in the nature of gratuitous editorial comment made years previously, and their use gave the impression that such publications continued to indorse the manufacturer's preparation, when, in fact, they did not, and, on the contrary, such publications had endeavored to persuade the manufacturer to discontinue the use of such excerpts. The manufacturer assured the Commission that it would not hereafter use such excerpts without giving the dates of the original publication thereof.

It further appeared that the manufacturer issued various circulars and other advertising matter containing disparaging and misleading statements with reference to competitors. The manufacturer assured the Commission that it would in the future make no disparaging or misleading statements with reference to such competitors:

Held, (1) That the publication by a manufacturer as reading matter of commendatory articles with reference to his products, which articles are in fact paid advertisements, is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (2) that the publication by a manufacturer of excerpts from commendatory articles by magazines in such a way as to lead the public to believe that such magazines continue to indorse the manufacturer's product, when, in fact, they do not, is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (3) that the making of false or misleading statements imputing to competitors fraudulent or dishonest business methods is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (4) that, the unfair competitive methods having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

74. Design patent—Infringement—Validity—Jurisdiction.—On application for the issuance of a complaint, it appeared that a company had secured a design patent, and almost immediately upon its issuance had advised parties manufacturing articles covered by the design that they must pay a royalty. The applicant alleged, and the facts strongly indicated, that the patent was void by reason of lack of novelty, and the applicant therefore sought relief from the Commission: *Held*, That in the absence of evidence that a patent has been unlawfully secured, the patentee has a right to advise those whom he conceives to be infringing it of his intention to protect his rights, provided such notice is given in good faith and not for the purpose of intimidating competitors or the customers of competitors; and (2) that in the absence of considerations of public interest the Commission will not institute proceedings to determine the validity of a patent where nothing more appears than that it may be void for lack of novelty.

75. False and misleading advertising—Competitive method discontinued.—On application for complaint, it was alleged that a manufacturer of pianos, engaged also in the retail trade, was publishing advertisements containing statements that it would sell player pianos manufactured by the applicant and widely known to the public at

"about half price," and at a saving of "from \$200 to \$400 on the established retail price," when, in fact, it was acquiring the applicant's pianos and installing therein inferior player mechanisms and selling this product as the applicant's player piano. On investigation it appeared that the concern complained against was engaging in the advertising complained of, and that it neither carried the applicant's player pianos in stock, nor had any intention of selling such player pianos at the prices advertised. It did not, however, appear that the concern was selling the applicant's pianos with the player actions of other makers installed as and for the applicant's player pianos, although it was installing its own player action, or that of other makers in pianos of the applicant's or other makes furnished by customers. The concern complained against assured the Commission that it would permanently discontinue the use of the advertisements in question: *Held*, (1) That the advertisement by a manufacturer, engaged also in retailing, of the player pianos of a competitor at greatly reduced prices, when, in fact, the advertiser has no such player pianos in stock and does not intend to furnish them to buyers at the prices advertised, where such advertisement is coupled with the intention, and followed by the effort, to sell, even with the knowledge of the buyer, player actions of entirely different makes in pianos of such competitor's make furnished by the purchaser, is an unfair method of competition, within the purview of section 5 of the Federal Trade Commission act; and (2) the unfair method of competition in question having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

APPENDIX I.

DECISIONS OF THE CIRCUIT COURTS OF APPEALS ON PETITIONS TO REVIEW THE ORDERS OF THE COMMISSION.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

SEARS, ROEBUCK & CO. v. FEDERAL TRADE COMMISSION.

(Circuit Court of Appeals, Seventh Circuit. April 29, 1919. No. 2859.)

1. TRADE-MARKS AND TRADE-NAMES, Key-No. 80½, New, Vol. 8A Key-No. Series—UNFAIR COMPETITION.

A finding by the Federal Trade Commission that a mail-order house doing an interstate business was guilty of unfair competition in selling sugars, teas, and coffees under representations that it had obtained special price concessions, because of the magnitude of its purchases, and that it purchased selected brands from abroad, *held* warranted.

2. TRADE-MARKS AND TRADE-NAMES, Key-No. 80½, New, Vol. 8A Key-No. Series—PROCEEDINGS BEFORE FEDERAL TRADE COMMISSION—INJUNCTIONAL ORDER.

An order issued by the Federal Trade Commission, restraining a mail-order house doing an interstate business to cease and desist from certain unfair practices in connection with the sale of sugar and other staple commodities, *held* not to have been improvidently issued because the mail-order house had discontinued such methods, where it was contending that act September 28, 1914, § 5 (Comp. St. § 8836e), creating the Federal Trade Commission, was unconstitutional, or, if valid, had not been infringed, and the Government's control of sugar sales and consumption had temporarily put an end to the objectionable practices in any event.

3. EVIDENCE, Key-No. 23 (1)—JUDICIAL NOTICE—GOVERNMENT CONTROL OF TRADE.

On petition to have a cease and desist order issued by the Federal Trade Commission vacated on the ground that the unfair practices

of petitioner which related to sales of sugar, etc., had ceased, the court will take judicial notice of the Government's control of the sale and consumption of sugar during the war, which temporarily at least put an end to the objectionable practice.

4. TRADE-MARKS AND TRADE-NAMES, Key-No. 80½, New, Vol. 8A Key-No. Series—UNFAIR COMPETITION—FEDERAL TRADE COMMISSION.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission authority over unfair methods of competition, and declaring the same unlawful, is not void for indefiniteness because the words "unfair methods of competition" were not defined, the trader being entitled to his day in court, where common-law principles would control.

5. CONSTITUTIONAL LAW, Key-No. 62, 80(2)—UNLAWFUL DELEGATION OF LEGISLATIVE AND JUDICIAL POWER.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission power to stop unfair methods of competition in commerce and declaring the same unlawful, is not an unlawful delegation of legislative and judicial power; Congress having by the act declared the public policy applicable to the situation.

6. TRADE-MARKS AND TRADE-NAMES, Key-No. 80½, New, Vol. 8A Key-No. Series—POWERS OF FEDERAL TRADE COMMISSION—UNFAIR COMPETITION.

The Federal Trade Commission, under its authority to stop unfair methods of competition, can not prevent a trader from selling a staple article as sugar below cost, although it may prevent such sales accompanied by representations which would injure other traders.

(The syllabus is taken from 258 Fed. Rep. 367.)

Alschuler, circuit judge, dissenting in part.

Original petition to review order of Federal Trade Commission.

Original petition by Sears, Roebuck & Co. against the Federal Trade Commission, to review an order commanding petitioner to desist from certain unfair methods of competition in commerce. Commission directed to modify its orders, and petition in other respects denied.

Sidney Adler, of Chicago, Ill., for petitioner.

John Walsh, of Chicago, Ill., for respondent.

Before Baker and Alschuler, circuit judges, and Carpenter, district judge.

Baker, circuit judge, delivered the opinion of the court:

This is an original petition to review an order entered by the respondent, the Federal Trade Commission, against the

petitioner, Sears, Roebuck & Co., a corporation, commanding the petitioner to desist from certain unfair methods of competition in commerce. Respondent's order was based on its complaint, filed on February 26, 1918, on the petitioner's answer, and on a written stipulation of facts. Procedure before the Commission and also before this court on review is prescribed in section 5 of the act to create a Federal Trade Commission, approved on September 26, 1914. Respondent's authority over the subject matter of its order is derived from the following provision in the same section: "Unfair methods of competition in commerce are hereby declared unlawful." Section 4 is a dictionary of terms used in the act. "Commerce" means interstate or foreign commerce; but the general term, "unfair methods of competition," is nowhere defined specifically, nor is there a schedule of methods that shall be deemed unfair.

In its complaint respondent averred that petitioner is engaged in interstate and foreign commerce, conducting a "mail-order" business; that petitioner for more than two years last past has practiced unfair methods of competition in commerce by false and misleading advertisements and acts, designed to injure and discredit its competitors and to deceive the general public, in the following ways:

1. By advertising that petitioner, because of large purchases of sugar and quick disposal of stock, is able to sell sugar at a price lower than others offering sugar for sale;

2. By advertising that petitioner is selling its sugar at a price much lower than that of its competitors and thereby imputing to its competitors the purpose of charging more than a fair price for their sugar;

3. By selling certain of its merchandise at less than cost on the condition that the customer simultaneously purchase other merchandise at prices which give petitioner a profit on the transaction, without letting the customer know the facts;

4. By advertising that the quality of merchandise sold by its competitors is inferior to that of similar merchandise sold by petitioner, and that petitioner buys certain of its merchandise in markets not accessible to its competitors and is therefore able to give better advantages in quality and price than those offered by its competitors.

Petitioner extensively circulated the following advertisements, among others:

We can afford to give this guarantee of a "less than wholesale price" because we are among the largest distributors of sugar, wholesale or retail, in the world. We sell every year thirty-five million pounds of sugar. And, buying in such vast quantities, and buying directly from the refineries, we naturally get our sugar for less money than other dealers.

For instance, every grocer carries granulated sugar in stock, but does he tell you which kind? There are two kinds—granulated cane

sugar and granulated beet sugar—and they look exactly alike. Some people prefer the one and some the other. But beet sugar usually costs less than cane sugar, so if you are getting beet sugar you should pay less for it. Do you know which kind you are getting and which you are paying for?

Our teas have a pronounced, yet delicate, tea flavor with an appealing fragrance, because we spare neither time nor expense to get the very best the greatest tea gardens of the world can produce.

First, because of the difficulty of getting in this country the exact character and flavor of certain teas, we do our own importing and critically test every tea. Our representative goes to the various tea-growing countries and makes the selection in person. Then, the greatest care is taken to get only first-crop pickings from upland soil.

Also, by buying direct from the tea gardens, while the crops are being harvested, we are able to have them always perfectly fresh.

It would be natural for you to conclude that all this care in buying and selecting would make our teas very high in price, but in reality, our prices are unusually low for such high quality. Here is a reason: By buying direct from the tea gardens we cut out the middleman's profit.

Over land and sea, from the greatest coffee regions in the world we bring you the choicest of the crop, and make it possible for you to have that fresh, savory, and fragrantly tempting cup of coffee for your breakfast. You see, we buy direct from the best plantations in the world. We get the pick of the crop—upland coffees from rich, healthy soil and growers of unquestioned experience and skill. We buy enormous quantities and pay cash, thus making it possible to offer our customers the very best coffees at very low prices.

Petitioner's sales of sugar during the second half of 1915 amounted to \$780,000 on which it lost \$196,000. Petitioner used sugar as a "leader" ("You save 2 to 4 cents on every pound"), offering a limited amount at the losing price in connection with a required purchase of other commodities at prices high enough to afford petitioner a satisfactory profit on the transaction as a whole, without letting the customer know that the sugar was being sold on any other basis than that of the other commodities. Petitioner obtained its sugar in the open market from refiners and wholesalers. Competitors got their sugar from the same sources, of the same quality, and at the same price. Sugar is a staple in the market. Price concessions upon large purchases are unobtainable. From the facts respecting petitioner's methods of advertising and buying and selling sugar respondent found, and properly so, in our judgment, that petitioner intentionally injured and discredited its competitors by falsely leading the public to believe that the competitors were unfair dealers in sugar and the other commodities which petitioner was offering in connection with sugar.

Petitioner purchased 75 per cent of its teas from wholesalers and importers in the United States. The remainder it purchased through its representative Peterson in Japan; but there was no proof that Peterson made or was qualified to make "selections in person" or "first-crop pickings from

upland soil." All of petitioner's coffees were purchased from wholesalers and importers in the United States. Respondent found that petitioner's advertisements of teas and coffees were false and designed to deceive the public and injure competitors.

By the order, issued on June 24, 1918, petitioner was commanded to desist from—

(1) Circulating throughout the States and Territories of the United States and the District of Columbia, catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said defendant or to customers of competitors, or to the public generally or leads them to believe, that because of large purchasing power and quick-moving stock, defendant is able to sell sugar at a price lower than its competitors;

(2) Selling, or offering to sell, sugar below cost through catalogues circulated throughout the States and Territories of the United States and the District of Columbia among its customers, prospective customers, and customers of its competitors;

(3) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, and customers of its competitors, catalogues containing advertisements representing that defendant's competitors do not deal justly, fairly and honestly with their customers;

(4) Circulating throughout the various States and Territories, of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it falsely stated that the defendant sends a special representative to Japan who personally goes into the tea gardens of said country and personally supervises the picking of such teas;

(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely stated that the defendant purchases all of its coffees direct from the best plantations in the world.

I. Petitioner insists that the injunctive order was improvidently issued because, before the complaint was filed and the hearing had, petitioner had discontinued the methods in question and, as stated in its answer, had no intention of resuming them. For example, no sugar offers of the character assailed were made after August, 1917. But respondent was required to find from all the evidence before it what was the real nature of petitioner's attitude. It was permissible for respondent to take judicial notice of the Government's wartime control of sugar sales and consumption. It was also proper to note that petitioner was contending (and still contends) that the act is void for indefiniteness, that the act is unconstitutional, and that the act, even if valid, under any proper construction has not been infringed by petitioner's practices. In *Goshen Mfg. Co. v. Myers Mfg. Co.* (242 U. S., 202), which was a suit for infringement of a patent, the defendant company averred

and introduced evidence to prove that six months before the bill was filed and with notice to complainant it had sold its factory, wound up its business, and had no intention of resuming. But throughout the intervening period and also in the answer to the bill the defendant company was attacking the validity of the patent and the right of the complainant to compel desistance. This conduct was held to be such a continuing menace as to justify the maintenance of the bill. So here, no assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

II. Petitioner urges that the declaration of section 5 must be held void for indefiniteness unless the words "unfair methods of competition" be construed to embrace no more than acts which on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases. But the phrase is no more indefinite than "due process of law." The general idea of that phrase as it appears in constitutions and statutes is quite well known; but we have never encountered what purported to be an all-embracing schedule or found a specific definition that would bar the continuing processes of judicial inclusion and exclusion based upon accumulating experience. If the expression "unfair methods of competition" is too uncertain for use, then under the same condemnation would fall the innumerable statutes which predicate rights and prohibitions upon "unsound mind," "undue influence," "unfaithfulness," "unfair use," "unfit for cultivation," "unreasonable rate," "unjust discrimination," and the like. This statute is remedial, and orders to desist are civil; but even in criminal law convictions are upheld on statutory prohibitions of "rebates or concessions" or of "schemes to defraud," without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the statutes were enacted. Why? Because the general ideas of "dishonesty" and "fraud" are so well, widely and uniformly understood that the general term "rebates or concessions" and "schemes to defraud" are sufficiently accurate measures of conduct.

On the face of this statute the legislative intent is apparent. The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as *parens patriae*, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to

injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases. But the restraining order of the Commissioners is merely provisional. The trader is entitled to his day in court, and there the same principles and tests that have been applied under the common law or under statutes of the kinds hereinbefore recited are expected by Congress to control. This *prima facie* reading of legislative intent is confirmed by reference to committee reports and debates in Congress, wherein is disclosed a refusal to limit the Commission and the courts to a prescribed list of specific acts (Cong. Rec., 63d Cong., 2d sess., pp. 13, 18, 533, 12246). And this interpretation is not affected by the subsequent adoption of the Clayton Act, October 15, 1914, condemning certain specific acts.

III. But such a construction of section 5, according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the Commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. (*Buttfield v. Stranahan*, 192 U. S., 470; *Union Bridge Co. v. United States*, 204 U. S., 365; *Penn. Rld. Co. v. International Coal Co.*, 230 U. S., 184; *National Pole Co. v. Chicago & N. W. Ry. Co.*, 211 Fed., 65.)

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the "board" or "commission" form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the Commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the Commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court.

IV. In the second paragraph of the order petitioner is commanded to cease selling sugar below cost. We find in the statute no intent on the part of Congress, even if it has

the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away. But manifestly in making such a sale or gift the owner may put forward representations and commit acts which have a capacity or a tendency to injure or to discredit competitors and to deceive purchasers as to the real character of the transaction. That paragraph should therefore be modified by adding to it "by means of or in connection with the representations prohibited in the first paragraph of this order, or similar representation."

Sufficient appears in this record and in the presentation of the case to warrant us in expressing the belief that petitioner's business standards were at least at high as those generally prevailing in the commercial world at the time in question, and that the action of the Commission is to be taken rather as a general illustration of the better methods required for the future than a specific selection of petitioner for reproof on account of its conduct in the past.

Respondent is directed to modify its order as above stated; and in other respects the petition is

Denied.

By ALSCHULER, *Circuit Judge.*

In my judgment the order of the Commission should be further modified by striking out the third paragraph, which relates to alleged representation that petitioner's competitors do not deal fairly and honestly with their customers. In so far as the sugar, coffee, and tea advertisements ascribe petitioner's asserted lower prices and superior qualities to quantity purchases and special facilities and advantages for inspection, selection, and purchasing, they would tend to negative any imputation upon competitors of unfair dealing with their patrons. I believe the charge of imputing to competitors unfair dealing with their patrons rests wholly on petitioner's so-called "Caveat emptor" advertisement in its catalogue of March and April, 1916, wherein the public is cautioned in regard to white sugar, stating that some is cane and some beet sugar, alike in appearance, but the former usually higher in price; that petitioner plainly designates which of the two it offers, and the query is suggested, where else are goods so plainly described, and whether the customer gets elsewhere what he thinks he is buying. It seems to me that this does not amount to more than a statement or boast that petitioner, without being asked, describes the white sugars it proposes to sell, and the intimation is carried that competitors do not volunteer such description, but it is not suggested that they actually misrepresent the truth.

The facts before the Commission appear by stipulation, and those concerning this advertisement, aside from the advertisement itself, are as follows:

When Mr. A. M. Daly, the attorney in charge of the investigation in these proceedings was in Chicago, in March, 1916, he submitted to Mr. A. V. H. Mory, chief chemist of Sears, Roebuck & Co., and Mr. Joseph Scott, manager of the grocery department, a copy of the advertisement entitled "Caveat emptor" hereinbefore mentioned, and hereto attached, and requested them to state their views as to this particular advertisement and what it meant. They stated that this advertisement was for the purpose of calling attention to the distinction between beet sugar and cane sugar and laying stress upon the point of the facilities that Sears, Roebuck & Co. have for marking everything plainly so that the customer would know better from description the exact nature of what he was buying. After this explanation Mr. Daly went to his hotel. In a short time Mr. Mory called on him there and stated in substance that he had submitted the above-mentioned advertisement to Mr. A. H. Loeb, the vice president of Sears, Roebuck & Co., and that Mr. Loeb said that this course of advertising was unfair and unjust and declared that it must be discontinued, and further that it was against the policy of the house to send out such advertisements. Thereupon, on March 28, 1916, Mr. A. V. H. Mory, chief chemist, wrote to the Commission in part as follows: "The young man who wrote this was in to-day, and I pointed out to him wherein he had made a mistake and acted against house policy. He promised to use the soft pedal on all references to the dealer in the future. He tells me that this is an angle that had not occurred to him. He had not thought of the write-up in the light of a criticism of the dealer, so intent was he in pointing out that with our system of marking everything plainly and our facilities for knowing what we are selling, the customer would know better from our description the exact nature of what he was buying, in the case of those things difficult to judge, than if he had them placed before him, which of course is true."

But, assuming, as did petitioner's vice president, that this advertisement does carry the imputation that competitors deal unfairly with their customers, under the circumstances indicated by the quotation ought this advertisement to be the basis of a finding and order? The publication was in the catalogue for March and April, 1916. The complaint was filed nearly two years afterwards. The act authorizes the Commission to proceed when it shall have reason to believe that unfair methods of competition are or have been used, "and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public." In a monitory proceeding such as this seems to be, it could hardly be said that it would be "of interest to the public" to predicate action on a transgression for which due amends had long before been made, without remotest cause to believe there would be a repetition. To revive a stale advertisement of this nature which the advertiser immediately after the publication distinctly disavowed as having been unintentionally and inadvertently unfair to competitors, and ordered discontinued, without directly or

indirectly repeating or renewing it for so long an interval, far from subserving the public interest, might, in my judgment, have the contrary tendency of raising an imputation of oppressive or at least uncalled-for action, in predicating any proceeding or order on this advertisement.

Nor am I impressed with the authoritative relevancy here of decisions respecting injunctions. In a proceeding such as this, neither remedial nor punitive decisions of courts respecting injunctive relief in equity are not more analogous than are common law decisions defining unfair trade practices, arising out of controversies between individuals, as fixing thereby the limitation of the Commission's authority or scope.

The suggested modification would necessitate corresponding modification of the Commission's findings of facts, eliminating paragraphs numbered 4 and 5 thereof. Paragraphs 2, 6, and 7 (as well as pars. 4 and 5) of the findings state the circulation of the several advertisements to have been in each case for "more than two years last past," indicating thereby the two years next before the date of the findings, which is June 24, 1918. This is in contravention of the stipulated fact that none of the advertisements were more recent than August, 1917—some of them even antedating the passage, September 26, 1914, of the Trade Commission act itself. These findings should, in my judgment, be modified to comply with the stipulated fact.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT.

FEDERAL TRADE COMMISSION v. GRATZ ET AL.

(Circuit Court of Appeals, Second Circuit. May 14, 1919. No. 236.)

TRADE-MARKS AND TRADE-NAMES, Key-No. 80½ New, Vol. 8A Key-No.
Series—UNFAIR COMPETITION—POWERS OF FEDERAL TRADE COM-
MISSION.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission power to investigate unfair methods of competition, does not contemplate the prohibition of unfair methods of competition between individuals, there being no authority given to individuals to present grievances, hence where defendants, who engaged in selling ties and bagging for cotton bales, refused to sell to persons with whom they had had previous unsatisfactory relations, and refused to sell ties without bagging when there was fear that, owing to the scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by

creating corners in ties, the Commission is not authorized to make any order compelling such sales. The unfair methods contemplated by the act are such as affect the public generally.

(The syllabus is taken from 258 Fed. Pep. 314.)

Petition to revise order of the Federal Trade Commission.

Petition of Warren, Jones & Gratz, by Anderson Gratz, for an order for the review of the findings and order of the Federal Trade Commission, and for an order setting the same aside, in a proceeding against Anderson Gratz and Benjamin Gratz, copartners doing business under the firm name and style of Warren, Jones & Gratz, and others. Order reversed.

T. F. Magner, of Brooklyn, N. Y., for petitioner.

John Walsh, of Washington, D. C., for respondent.

Before Ward, Hough, and Manton, circuit judges.

WARD, Circuit Judge:

This is a petition of Anderson Gratz, a member of the firm of Warren, Jones & Gratz, under section 5 of the act of September 26, 1814, 38 Stat. L. 730, creating the Federal Trade Commission, to review the following order of the Commission:

Therefore, It is ordered, that the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy a proportionate amount of American Manufacturing Co.'s bagging; and further that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Co.'s bagging, or any amount of cotton bagging of any kind.

By the Commission,

[SEAL.]

L. L. BRACKEN, *Secretary*.

If Anderson Gratz has not sufficient standing to file this petition, counsel for the Commission has very fairly waived the objection and invited the court to dispose of the questions raised.

The first count of the complaint served on the respondents, which is the only one involved, is as follows:

PARAGRAPH 1. That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Co. of Pittsburgh, Pa.,

and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Co., of St. Louis, Mo.

PAR. 2. That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginnerers and farmers.

PAR. 3. That with the purpose, intent and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

The respondents filed an answer admitting the facts stated in paragraphs 1 and 2, but denying the facts stated and the conclusion of law contained in paragraph 3. They appeared and offered testimony before the Commission.

The Commission's material findings of fact and its conclusions of law are as follows:

PAR. 2. That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. * * *

PAR. 4. * * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Co., and in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Co., from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging, and against other dealers and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging

known as re woven bagging and second-hand bagging, 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 that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act.

By agreement between the parties the Commission filed a transcript of the entire record in the proceeding before it. This court is given power by the act to affirm, modify, or set aside such an order, the Commission's findings of fact to be conclusive if supported by testimony.

There is testimony to support the findings of fact and therefore the question before us is whether they do support the Commission's conclusion of law that the method of competition forbidden is unfair within the meaning of section 5 of the act of September 26, 1914.

It seems to us that unfair methods of competition between individuals are not contemplated by the act. Congress could not have intended to submit to the determination of the Commission such questions as whether a person, partnership, or corporation had treated or bribed the employees of a competitor for the purpose of inducing them to betray their employer. We think the unfair methods, though not restricted to such as violate the antitrust acts, must be at least such as are unfair to the public generally. It seems to us that section 5 is intended to provide a method of preventing practices unfair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the antitrust acts. Such a preliminary inquiry and determination constitutes a most important supplement in carrying out the public policy which those acts are intended to vindicate. This view is confirmed by the language of the section:

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.

No authority is given to any individual to present his grievances and the Commission is to interpose only in the interest of the public.

That the Commission did not find sufficient proof to sustain the second count in the complaint, viz, that the method of the respondents found to be unfair violated section 3 of the act of October 15, 1914, known as the Clayton Act, which

makes unlawful any condition, agreement, or understanding that may lessen competition or tend to create a monopoly shows that the method found to be unfair must have been unfair in certain individual transactions. And we discover no evidence to support the finding in paragraph 2 that the respondents "adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging." It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton. It is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in paragraph 4.

Counsel for the Commission calls our attention to the opinion of the Circuit Court of Appeals for the Seventh Circuit, not yet reported, *Sears, Roebuck & Co., petitioners, against Federal Trade Commission, respondent*. The practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally.

As we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Co.'s bagging and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed.

APPENDIX II.

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS, AND RULES OF PRACTICE BEFORE THE COMMISSION.

ACTS OF CONGRESS FORM WHICH THE COMMISSION DERIVES ITS POWERS.

[Federal Trade Commission act, approved Sept. 26, 1914.]

[PUBLIC—No. 203—63d CONGRESS.]

[H. R. 15613.]

[Chap. 311, 38 Stat., 717.]

An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

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 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 commissioner 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.

The commission shall have an official seal, which shall be judicially noticed.

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 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.

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.

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.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the 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.

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, paper, 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.

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.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"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 carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"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.

"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; 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.

SEC. 5. That unfair methods of competition in commerce are hereby declared 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.

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.

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 application 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.

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.

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.

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 shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the anti-trust acts.

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 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, 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 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. 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.

(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.

(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, 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.

(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 by any corporation.

(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 in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(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 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.

(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.

(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. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, 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.

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 shall detail from time to time such officials and employees to the commission as he may direct.

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 subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

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 subpoena 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.

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 subpoena 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.

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.

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 investigation. Such depositions may be taken before any person designated by the commission and having power to 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. 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.

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.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena 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 obedi-

ence to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

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 subpoena 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.

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 to 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.

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.

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, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts 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.

[Clayton Act, approved Oct. 15, 1914.]

[PUBLIC—No. 212—63d CONGRESS.]

[H. R. 15657.]

[Chap. 323, 38 Stat., 730.]

An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

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 July second, eighteen hundred and ninety; 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, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"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.

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.

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 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.

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. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws 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 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. 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 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.

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. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws 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 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. 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.

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 cor-

porations, 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.

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.

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.

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, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

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 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.

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 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.

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. 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.

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. 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.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

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. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securi-

ties, 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.

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 officer or director.

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.

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.

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:

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 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 testi-

mony 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.

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 commission 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 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 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 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.

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 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 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.

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.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone 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.

SEC. 12. That any suit, action, or proceeding under the antitrust laws 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.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena 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. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be 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.

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 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 subpoenas to that end may be served in any district by the marshal thereof.

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, 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.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

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 injury 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.

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.

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. 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. 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.

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 there 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.

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 be lawfully be, for the purpose of peacefully obtaining or communicating 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, 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.

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 of 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.

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*, 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.

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.

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.

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. 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. 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. 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.

[Webb Act, approved April 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

[Chap. 50, 40 Stat., 516.]

An Act To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress 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.

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.

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.

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, 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 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. 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, 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 or substantially lessen competition within the United States.

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, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

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 all of 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.

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.

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."

RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 17, 1915. Amended Oct. 29, 1915, and Apr. 25, 1917.]

I. SESSIONS.

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.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

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.

All orders of the Commission shall be signed by the Secretary.

II. COMPLAINTS.

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.

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.

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, the Commission shall issue and serve upon the party complained of a complaint stating 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.¹

III. ANSWERS.

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 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

¹ The third paragraph of Rule II originally read as follows: "The Commission shall investigate the matters complained of in such application, and if upon investigation it shall appear to the Commission that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating 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." It was amended to its present form on Oct. 29, 1915.

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 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.

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 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 association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association, at his or its 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.

V. INTERVENTION.

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.

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.

Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPENAS.

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.

Subpenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpenas 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.

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.

VIII. TIME FOR TAKING TESTIMONY.¹

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 5 nor more than 10 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.

IX. OBJECTIONS TO EVIDENCE.

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.

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.

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.

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. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

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 deposition 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

¹ Rules VIII, IX, X, and XI were not a part of the original rules. They were adopted on Apr. 25, 1917. The rules now numbered XII, XIII, XIV, and XV were originally numbered VIII, IX, X, and XI, respectively.

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.

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 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 envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition 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.

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.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

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.

XIII. DOCUMENTARY EVIDENCE.

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 evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XIV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. 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.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Fifteen copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered.

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 5 days before the time for filing the 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.

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.

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 will be had only as ordered by the commission.

XV. ADDRESS OF THE COMMISSION.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.