

Complaint.

S. F. T. C.

FEDERAL TRADE COMMISSION
v.
UNITED RENDERING COMPANY ET AL.

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

Docket 159.—February 5, 1921.

SYLLABUS.

Where concerns engaged in the rendering business in or near Philadelphia, acting through a corporation organized by them for that purpose, paid prohibitive and unwarranted prices for raw materials in Trenton and Asbury Park, N. J., in order to punish a Trenton competitor which had begun purchasing raw materials in the Philadelphia market, with resulting loss of money to said competitor and to the successor to which it was forced by said loss to sell; and

Where a corporation, through its employees, interfered with the business of a competitor by causing its automobiles to follow said competitor's trucks for the purpose of spying upon its business and customers in order to, and with the effect of, hindering, delaying, and embarrassing said competitor in the conduct of its business:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the United Rendering Co., M. L. Shoemaker & Co. (Inc.), the Berg Co., the D. B. Martin Co., Consolidated Dressed Beef Co., Baugh & Sons Co., Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser, herein-after referred to as the respondents, have been and 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 power 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 United Rendering Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and factory located at the city of Trenton, in said State; that M. L.

Shoemaker & Co. (Inc.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and factory located at the city of Philadelphia, in said State, and the respondent Winfield S. Allen is the vice president and general manager of said company; that the Berg Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and factory located at the city of Philadelphia, and the respondent Nathan Berg is an officer and stockholder of said company; that the respondent the D. B. Martin Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and factory at the city of Philadelphia, in the State of Pennsylvania, and the respondent F. W. English is secretary of the said company; that the respondent Consolidated Dressed Beef Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and factory at the city of Philadelphia, and the respondent Christopher Offenhauser is a director and stockholder in said corporation; that the respondent Baugh & Sons Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and factory at the city of Philadelphia; that the respondent the D. B. Martin Co. is a stockholder in the respondent the United Rendering Co., and the respondents Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser are each and all of them stockholders and officers of the respondent the United Rendering Co.; that the respondent corporations are now and for more than one year last have been engaged in the business of refining animal fats and selling their products throughout the States of the United States and the Territories thereof in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondent corporations purchase large amounts of raw materials in different States of the United States and cause the same to be transported through other States to their refineries, where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States and Territories of the United States and the District of Columbia; that after such products are so manufactured they are continuously moved to, from, and among other States of the United States, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said

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products between and among the various States of the United States, and especially to and through the cities of Philadelphia, State of Pennsylvania, and Trenton, State of New Jersey, and therefrom to and through other States and Territories of the United States.

PAR. 3. That the respondents, while conducting their business generally at a profit, are now, and for more than one year last past have been, wrongfully and unlawfully engaged in a combination of conspiracy among themselves entered into, carried out, and continued with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the business of refining animal fats and the sale of their other products in interstate commerce by purchasing and offering to purchase raw materials necessary in the manufacture of their products in certain local areas, to wit, in and about the city of Philadelphia, State of Pennsylvania, and the city of Trenton, State of New Jersey, at and for prices unwarranted by trade conditions, and so high as to be prohibitive to small competitors in such areas; that such prices were calculated and designed to and did punish certain competitors in such areas who refused to become a party to a working arrangement offered by respondents to such competitors whereby competition in bidding for such raw materials was to be eliminated in and about the said city of Philadelphia.

PAR. 4. That the respondent M. L. Shoemaker & Co. (Inc.), through and by their agents, servants, and employees, for more than one year last past have interfered with the business of certain of their competitors by causing certain of said respondent's automobiles to follow the trucks of certain of its competitors for the purpose of spying upon the business and customers of said competitors; that such spying upon the business and customers of said competitors was calculated and designed to and did, hinder, delay, and embarrass said competitors in the conduct of their business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, United Rendering Co., M. L. Shoemaker & Co. (Inc.), the Berg Co., the D. B. Martin Co., Consolidated Dressed Beef Co., Baugh & Sons Co., Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser, charging them, and each of them, with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered their appearance by their respective attorneys

and having filed their answers herein (except that the United Rendering Co., respondent, did not file an answer, but entered its appearance), hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Everett M. Hawley, an examiner of the Federal Trade Commission theretofore duly appointed, all of the respondents having waived the introduction of evidence in denial of the charges in said complaint.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel, and having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent M. L. Shoemaker & Co. (Inc.) is a corporation organized under the laws of the State of Pennsylvania, with its principal office and factory located in the city of Philadelphia, and the respondent Winfield S. Allen is the vice president and general manager of said company. That the respondent the Berg Co. is a Pennsylvania corporation, with its principal office and factory located in the city of Philadelphia, and the respondent Nathan Berg is an officer and stockholder in said company. That the respondent the D. B. Martin Co. is a Delaware corporation, with its principal office and factory located in the city of Philadelphia, and the respondent F. W. English is the secretary of said company. That the respondent Consolidated Dressed Beef Co. is a Pennsylvania corporation, with its principal office and factory located in the city of Philadelphia, owning three-fourths of the capital stock of a corporation known as the Philadelphia Animal Products Co., which last-named company conducts a rendering business in the city of Philadelphia and purchases raw materials for such business in the name of the respondent Consolidated Dressed Beef Co., and that the respondent Christopher Offenhauser is an officer of the Consolidated Dressed Beef Co. and is manager of the said the Philadelphia Animal Products Co. and owns one-fourth of the capital stock of the said the Philadelphia Animal Products Co. That the respondent Baugh & Sons Co. is a Pennsylvania corporation, with its principal office and factory located in the city of Philadelphia. That all of the aforementioned respondent corporations are now and have been for more than one year last past engaged in the business of refining animal fats and selling their products throughout the States of the United States in competition with other persons, firms, copartnerships, and corporations similarly engaged, and that in the conduct of their

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business the aforementioned corporations purchase large amounts of raw materials in different States of the United States and cause the same to be transported to their refineries where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States of the United States, and that after such products are so manufactured they are continuously moved to and from and among other States of the United States and there is continuously and has been at all times mentioned in the complaint (excepting as to M. L. Shoemaker & Co. (Inc.), which was not incorporated until March 27, 1917, from which time it has purchased raw materials in different States of the United States and caused the same to be transported to its refinery where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States of the United States) a constant current of trade in commerce in said products between and among the various States of the United States and especially to and through the city of Philadelphia, State of Pennsylvania, and the city of Trenton, State of New Jersey, and therefrom to and through other States and Territories of the United States.

PAR. 2. That for a number of years prior to September, 1915, all of the individuals, respondents, named in the foregoing paragraph, together with representatives of respondent Baugh & Sons Co., had been holding and attending meetings in the city of Philadelphia for the purpose of fixing and maintaining prices to be paid butchers in the city of Philadelphia and the surrounding territory for their fats, bones, suet, and similar materials, and for the purpose also of agreeing upon divisions of territory in which there would be no competition in the purchase of raw materials. That for the purpose of carrying out agreements made at these meetings the corporation respondents mentioned in the foregoing paragraph (excepting M. L. Shoemaker & Co. (Inc.), which did not become a corporation until Mar. 27, 1917), and M. L. Shoemaker & Co. (Ltd.), of which the respondent, Winfield S. Allen, was an officer and which was dissolved December 15, 1916, refused to take customers from each other and paid practically the same prices for the various materials purchased, and that they purchased only in certain agreed territories, the effect of all of which was to keep down the price of raw materials.

PAR. 3. That the Brown Co. was a corporation organized under the laws of New Jersey in 1912, with its principal factory and place of business located at Trenton, N. J. It commenced business in 1912 with a paid-in capital stock of \$25,000, and its president was David G. Weil, of the firm of Sternfeld & Weil, hide dealers in Phila-

delphia, Pa., carrying on its business of rendering fats, bones, suet, and kindred materials at its factory in Trenton, N. J., securing its raw materials from which it rendered its finished products from butcher shops located in the city of Trenton, aforesaid, and in the surrounding territory in New Jersey. After its raw materials were manufactured into the finished products, such products were sold and shipped to purchasers in various States of the United States and were sold in competition with other persons, firms, copartnerships, and corporations similarly engaged. In September, 1915, it was decided by the officers of the Brown Co. to increase the volume of its raw materials by sending a wagon into Philadelphia, Pa., for the purpose of purchasing from butcher shops in that city fats, bones, and suet and kindred materials, which were to be transported from Philadelphia, Pa., to the factory of the Brown Co. at Trenton, N. J., to be rendered into finished products. This was done, and during the month of September, 1915, the Brown Co. acquired 70 customers in Philadelphia, Pa., from whom it purchased raw materials which it transported from Philadelphia, Pa., to its factory in Trenton, N. J., where those materials were rendered into the finished products.

PAR. 4. That when the Brown Co. first sent its wagon into Philadelphia the individuals, respondents, held a meeting and decided to unite their efforts and the efforts of the rendering companies they were respectively identified with against the Brown Co. to compel it to cease buying raw materials in the city of Philadelphia. This meeting was attended by a representative of Baugh & Sons Co. Efforts were made to induce the Brown Co. to withdraw from the Philadelphia field. F. W. English, in behalf of the persons who attended the above-mentioned meeting, and in behalf of the firms represented at that meeting, asked David G. Weil, president of the Brown Co., to withdraw the wagon of the Brown Co. from Philadelphia and cease collecting raw materials in the city of Philadelphia. When Weil would not accede to that request, English said that the Brown Co. would be compelled to cease buying raw materials in Philadelphia because the corporations for which he was spokesman would compete with the Brown Co. by way of purchasing raw materials in Trenton, N. J., whereby the Brown Co. would be compelled to withdraw from Philadelphia.

PAR. 5. That the respondent, the United Rendering Co., was then organized, its charter being dated October 8, 1915. The amount of paid-in capital stock was \$10,000, which was paid as follows: M. L. Shoemaker & Co. (Ltd.) paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to Winfield S. Allen, respondent; the D. B. Martin Co.,

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respondent, paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to F. W. English, respondent; the Berg Co., respondent, paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to Nathan Berg, respondent; the Consolidated Dressed Beef Co., respondent, paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to Christopher Offenhauser, respondent. While Daugh & Sons Co. did not contribute to the paid-in capital stock of the United Rendering Co., it agreed that it would pay one-fifth of the loss of the United Rendering Co. up to an amount equal to one-fifth of the paid-in capital stock of \$10,000 of the United Rendering Co., respondent. That the said persons, respondents, in whose names certificates for shares of stock in the United Rendering Co., respondent, were issued were the officers of the United Rendering Co., respondent, and continued to be officers of that company until June 4, 1918.

PAR. 6. That Winfield S. Allen, respondent, president of the United Rendering Co., respondent, called on Randolph H. Miller, a stockholder and director of the Brown Co., who lived at Asbury Park, N. J., and tried to induce the said Miller to use his influence to have the Brown Co. withdraw from Philadelphia. Allen told Miller that he, Allen, was not making any threats, but that the Brown Co. would not make any money in Philadelphia. On this occasion Allen requested the assistance of Miller to obtain for him, Allen, the control of the Brown Co.'s capital stock, which request was refused. This visit of Allen's to Miller took place at about the time of the organization of the United Rendering Co.

PAR. 7. That on November 1, 1915, the United Rendering Co. began purchasing raw materials in the city of Trenton, N. J., under the supervision of one Milton Wylie Brown, a former employee of the Brown Co., and who by reason of having been a former employee of that company, was acquainted with the Brown Co.'s customers. In purchasing these raw materials the United Rendering Co., through Milton Wylie Brown, paid prices which were higher than the Brown Co. was paying, unwarranted by trade conditions, and prohibitive to competitors. By paying such prohibitive and unwarranted prices during the month of November, 1915, the United Rendering Co. secured 32 customers who had immediately previously sold their raw materials to the Brown Co. From December 1, 1915, to April 1, 1916, 11 other customers of the Brown Co. were taken by the United Rendering Co. As a direct result of the loss

of customers (by reason of which the amount of tonnage of the Brown Co. was decreased), and because of the high prices which it was compelled to pay to the customers it kept, the Brown Co. sustained a financial loss, which loss finally forced it to sell out to one Edward T. Murphy in December, 1916. The raw materials collected by the United Rendering Co. were not rendered at Trenton, but were shipped to Philadelphia by boat, railroad, or truck, and there refined into the finished products by the Consolidated Dressed Beef Co., the Berg Co., the D. B. Martin Co., and M. L. Shoemaker & Co. (Ltd.). For a short time after the United Rendering Co. commenced business, the corporations last above mentioned in turn rendered the raw materials collected by the United Rendering Co., but later the said raw materials were sold to the highest bidder among the Berg Co., Consolidated Dressed Beef Co., the D. B. Martin Co., and M. L. Shoemaker & Co. (Ltd.). The bids were made at meetings of the board of directors of the United Rendering Co. held in the Bellevue-Stratford Hotel, Philadelphia, and attended by a representative of Baugh & Sons Co. The prices bid and paid by the respondents for the materials collected by the United Rendering Co. were, from November, 1915, to November, 1916, in excess of the prices the respondents were paying for similar materials in the city of Philadelphia.

PAR. 8. That the purpose of the respondents in organizing the United Rendering Co. and in paying through it prohibitive prices for raw materials in Trenton, N. J., was to punish the Brown Co. for continuing the purchase of raw materials in Philadelphia.

PAR. 9. That in April, 1916, the United Rendering Co. purchased the fat route of one Levy, who had been purchasing raw materials in the city of Asbury Park, N. J., in competition with the Flavell Co., of which Randolph H. Miller, a stockholder and director of the Brown Co., was a stockholder and officer. The United Rendering Co. thereupon purchased raw materials in Asbury Park at prices unwarranted by trade conditions, and as a result the Flavell Co. lost to the United Rendering Co. a number of customers, and as a further result the Flavell Co. did not make any profit from the business it conducted. That the purpose of the United Rendering Co. in going to Asbury Park was to compel the Brown Co. to cease buying raw materials in Philadelphia. That in September, 1916, after Randolph H. Miller had sold his interest in the Brown Co., the Flavell Co., of which he was then President, paid the United Rendering Co. \$5,000, for which the United Rendering Co. agreed to cease buying raw materials in the territory covered by the Flavell

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Co. That the only physical assets received by the Flavell Co. in the above-mentioned transaction were a horse and wagon.

PAR. 10. That the Brown Co. was dissolved and its business continued by a new corporation organized December 1, 1916, and known as the Brown Co. (Inc.). The chief stockholder of the Brown Co. (Inc.), was Edward T. Murphy. That in December, 1916, the respondents (excepting M. L. Shoemaker & Co. (Inc.), which was not organized until March 27, 1917), through Nathan Berg, attempted to induce Murphy to withdraw the Brown Co. (Inc.) from the Philadelphia territory and offered the Brown Co. (Inc.) in return \$35,000 cash, and in addition, all the trade which the United Rendering Co. had acquired in Trenton, N. J., and vicinity. That when Murphy refused this offer, the respondents then raised the prices they were paying butchers in the city of Philadelphia for raw materials by reason of which the Brown Co. (Inc.), suffered a loss of \$30,000 in the period from December 1, 1916, to April 1, 1917, when Murphy sold his holdings in the Brown Co. (Inc.) to the American Agricultural Chemical Co.

PAR. 11. That when the United Rendering Co. was organized on October 8, 1915, the president thereof, Winfield S. Allen, was also the vice president and general manager of M. L. Shoemaker & Co. (Ltd.), a limited partnership engaged in the rendering business, with its factory and principal place of business located in Philadelphia. That the said Allen continued as president of the United Rendering Co. until June 4, 1918. That he remained vice president and general manager of M. L. Shoemaker & Co. (Ltd.), until its dissolution in December, 1916. Upon the dissolution of M. L. Shoemaker & Co. (Ltd.) the assets of the firm became the assets of a new corporation known as M. L. Shoemaker & Co. (Inc.), which was organized March 27, 1917, under the laws of the State of Pennsylvania, and which commenced business on April 1, 1917. That the said Allen, on March 27, 1917, became a stockholder and officer of M. L. Shoemaker & Co. (Inc.), and at the time testimony in this proceeding was concluded, was an officer and stockholder of M. L. Shoemaker & Co. (Inc.). That after April 1, 1917, M. L. Shoemaker & Co. (Inc.) was represented by the said Allen at meetings of the United Rendering Co., and purchased raw materials from the United Rendering Co.

PAR. 12. That the president of M. L. Shoemaker & Co. (Ltd.) knew of the connection between that company and the United Rendering Co. After the dissolution of M. L. Shoemaker & Co. (Ltd.), and before the organization of M. L. Shoemaker & Co. (Inc.), the trustees for the winding up of the business of M. L. Shoemaker

& Co. (Ltd.) sold to Winfield S. Allen the shares of stock held by Winfield S. Allen for M. L. Shoemaker & Co. (Ltd.) in the United Rendering Co. That these shares of stock were sold at private sale to Winfield S. Allen, who was one of the trustees in the winding up of the business of M. L. Shoemaker & Co. (Ltd.). Another of the trustees was William B. Adamson, who had been president of M. L. Shoemaker & Co. (Ltd.), and who became on March 27, 1917, the president of M. L. Shoemaker & Co. (Inc.). That the stock so sold by the trustees to said Allen at private sale was the only part of the assets of M. L. Shoemaker & Co. (Ltd.) disposed of by the trustees at private sale.

PAR. 13. That while the respondents, from November 1, 1915, to September 1, 1916 (excepting M. L. Shoemaker & Co. (Inc.), which had not then been organized), were paying prohibitive prices in Trenton and prices unwarranted by trade conditions and prohibitive to competitors, the respondents, Consolidated Dressed Beef Co., the D. B. Martin Co., the Berg Co., and Baugh & Sons Co., were doing business generally at a profit.

PAR. 14. That the United Rendering Co., from November 1, 1915, to January 1, 1917, sustained a substantial loss in the purchase of raw materials.

PAR. 15. That on or about June 4, 1918, Winfield S. Allen, respondent; Christopher Offenhauser, respondent; and Nathan Berg, respondent, resigned their respective offices in the United Rendering Co.

PAR. 16. That during the month of June, 1917, servants and employees of respondent, M. L. Shoemaker & Co. (Inc.), interfered with the business of a competitor, the Brown Co. (Inc.), by causing certain of said respondent's automobiles to follow the trucks of the Brown Co. (Inc.) for the purpose of spying upon the business and customers of the said the Brown Co. (Inc.); that such spying upon the business and customers of said the Brown Co. (Inc.) was calculated, designed to, and did hinder, delay, and embarrass the said Brown Co. (Inc.), a competitor of M. L. Shoemaker & Co. (Inc.), in the conduct of its business.

CONCLUSIONS.

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

Order.

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ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respective respondents (excepting that the United Rendering Co., respondent, which did not file answer, entered its appearance), the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusions that the respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, the United Rendering Co., the Berg Co., the D. B. Martin Co., Consolidated Dressed Beef Co., Baugh & Sons Co., Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser, do cease and desist from engaging in a combination or conspiracy among themselves or with others, with the intent and purpose of discouraging, stifling, and suppressing competition in the business of refining animal fats and the sale of their other products in interstate commerce, by purchasing and offering to purchase raw materials necessary in the manufacture of their products, in certain local areas, to wit, in and about the city of Trenton, N. J., or elsewhere, at and for prices unwarranted by trade conditions and so high as to be prohibitive to competitors in such areas.

And it is further ordered, That the respondent, M. L. Shoemaker & Co. (Inc.), do cease and desist, through and by their agents, servants, and employees, from interfering with the business of any of their competitors in the purchase of raw materials used in the refining of animal fats by causing said respondent's automobiles to follow the trucks of such competitors for the purpose of spying upon the business and customers of such competitors, when calculated and designed to hinder, delay, and embarrass said competitors in the conduct of their business.

And it is further ordered, That the respondents make and file with the Commission, within 30 days from the date of service hereof, a report in writing setting forth in detail the manner and form in which this order has been conformed to.

Complaint.

FEDERAL TRADE COMMISSION

v.

RAYMOND BROTHERS-CLARK COMPANY.

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

Docket 460—February 23, 1921.

SYLLABUS.

Where a corporation dealing in groceries at wholesale,

- (a) Failed to inform a competing concern, which was engaged also in retailing, of the arrival of a much-needed shipment in a "pool" car consigned to it by a manufacturer, although it promptly informed other concerns whose shipments arrived in said car;
- (b) Kept the shipment belonging to such competitor in its possession more than a month, meanwhile protesting to the manufacturer against his selling directly to said competitor and trying to secure a jobber's commission on the transaction; and
- (c) Threatened to return to the manufacturer all goods of his manufacture which it had in stock if the commission claimed were not allowed or if further sales were made directly to said competitor, and to cease buying from him in future, and did so cease;

With the effect of hindering competition between the competing concern and its competitors, and with the intent and tendency to limit the manufacturer in the selection of his customers, in restraint of his trade, and to restrict the competing concern in its purchases of commodities in competition with other buyers:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Raymond Bros.-Clark Co., hereinafter referred to as the respondent, has been and is violating the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, upon information and belief, as follows:

PARAGRAPH 1. That the Basket Stores Co. is a corporation organized under the laws of Nebraska, having its principal place of business at Omaha, in the State of Nebraska, and also having branch

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stores and places of business at other places, including Lincoln, in said State of Nebraska; that the said company is engaged in the business of buying and selling in wholesale quantities groceries and food products such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer; that in the course of its said business the Basket Stores Co. purchases the products dealt in by it in the various States and Territories of the United States and transports the same through other States and Territories to the cities of Omaha and Lincoln, in the State of Nebraska, where such commodities are resold, and there is continually and has been at all times hereafter mentioned a constant current of trade and commerce in the commodities so purchased by the said Basket Stores Co. between and among the various States and Territories of the United States; that the said Basket Stores Co. is in active competition with the respondent, Raymond Bros.-Clark Co.

PAR. 2. That the respondent, Raymond Bros.-Clark Co., is a corporation organized under the laws of the State of Nebraska, having its principal place of business at Lincoln in said State, and is engaged in the business known generally as that of wholesale grocer; that the said respondent purchases the commodities dealt in by it in the various States and Territories of the United States and transports the same through other States and Territories to said city of Lincoln, in said State of Nebraska.

PAR. 3. That the T. A. Snider Preserve Co. is a corporation manufacturing certain food products which are sold and transported in the various States and Territories of the United States.

PAR. 4. That in or about the month of September, 1918, the said T. A. Snider Preserve Co. caused to be shipped and transported from Marion, in the State of Indiana, to the city of Lincoln, in the State of Nebraska, certain products manufactured by it which had been sold to and were intended for delivery to the said Basket Stores Co. at said city of Lincoln, Nebr.; that the said products were shipped and transported in a car which also contained certain products of the said T. A. Snider Preserve Co. which had been ordered by and were intended for delivery to the respondent at said Lincoln, Nebr.; that when the said car arrived the respondent took possession of said products intended for delivery to said Basket Stores Co. and declined to allow delivery of the same to the said Basket Stores Co. unless the said T. A. Snider Preserve Co. paid to the respondent the sum of \$100 as and for a jobber's profit upon the sale of said goods; that thereafter the said respondent at divers times attempted to

coerce and compel the said T. A. Snider Preserve Co. to refuse to recognize said Basket Stores Co. as a jobber and to refuse to sell to said Basket Stores Co. at prices regularly charged to recognized jobbers, and at divers times has represented to said T. A. Snider Preserve Co. that the said Basket Stores Co. was not a legitimate jobber and had never been such, but was engaged in the retail grocery business; and said respondent has at divers times since the month of September, 1918, threatened to withdraw its patronage from said T. A. Snider Preserve Co. if said company sold to or recognized said Basket Stores Co. as a jobber and refused to pay to said respondent said sum of \$100 aforesaid; that the purpose and effect of the aforesaid acts and practices of the respondent were and are to cut off the supplies of its said competitor, said Basket Stores Co., to stifle, suppress, and prevent competition between respondent and said Basket Stores Co., and to interfere with the right of said Basket Stores Co. and said T. A. Snider Preserve Co. to deal freely with each other in interstate commerce upon terms mutually agreed upon between them.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Raymond Bros.-Clark Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorneys and filed its answer herein, thereupon witnesses were examined and evidence received in support of the allegations of said complaint and on behalf of the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed, and the testimony so taken was reduced to writing and filed in the office of the Commission, whereupon the proceeding came on for final hearing by said Commission, and it having heard argument of counsel, and having duly considered the complaint, the answer thereto, and the evidence adduced, and being fully advised in the premises, and being of the opinion that the method of competition in question is prohibited by said act, makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under and existing by virtue of the laws of the State of Nebraska. Its principal place of business is at Lincoln, Nebr. Respondent's business is that of a wholesale grocer, buying groceries, provisions, and the like com-

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modities in wholesale quantities from the manufacturers thereof throughout the United States, which commodities are transported from points outside the State of Nebraska to the warehouse of the respondent at Lincoln, Nebr., and are resold and transported to customers in and beyond the State of Nebraska. The business operations of the respondent include sales and deliveries in Nebraska, Colorado, Kansas, Wyoming, South Dakota, and Montana, and its annual volume of business is approximately \$2,500,000. In the conduct of its business the respondent is in competition, among others, with the Basket Stores Co.

PAR. 2. The Basket Stores Co. is a corporation organized under and existing by virtue of the laws of the State of Nebraska. Its principal place of business is at Omaha, Nebr. The Basket Stores Co. conducts two lines of business—one, that of a wholesale grocer, and that of retail selling through a chain or organization of retail stores. As a wholesale grocer, the Basket Stores Co. maintains a warehouse at Omaha and a branch warehouse at Lincoln, Nebr. It buys groceries, provisions, and the like commodities in wholesale quantities from the manufacturers thereof throughout the United States, which commodities are transported from points outside the State of Nebraska to the warehouse of the Basket Stores Co. at Omaha and Lincoln, Nebr., and are resold in part and transported to customers within and outside of the State of Nebraska. This part of the Basket Stores Co.'s business is about 10 per cent of the total. The Basket Stores Co. was licensed as a wholesale grocery house by the United States Food Administration, which fact was known to the respondent. The Basket Stores Co. also operates a series or chain of retail stores, 72 in number, 4 of which are in Iowa, the remainder being located in Nebraska. There were, at this time, 18 stores operated by the Basket Stores Co. in Lincoln. The groceries, provisions, and like commodities distributed through these stores were supplied from the Basket Stores Co.'s warehouses. About 90 per cent of the company's business was done through these retail stores. The total annual volume of the Basket Stores Co.'s business is approximately \$2,500,000.

PAR. 3. In the month of September, 1918, a representative of F. A. Snider Preserve Co. solicited from the Basket Stores Co.'s officials, at its head office at Omaha, and obtained an order for commodities produced by the Snider Co., to be shipped to the warehouse of the Basket Stores Co. at Lincoln. The Snider Co. also secured orders from the respondent and other customers in neighboring communities. The commodities sold in and around Lincoln were placed by the Snider Co. in one car, consigned to respondent at Lincoln, mak-

ing up what is known as a "pool" car to get the benefit of the freight rate on a car-lot shipment. The Snider Co. sent to respondent a statement of the car contents, showing the various business houses for which certain specified goods were intended, the Basket Stores Co. and its purchase from Snider Co. being shown on this statement.

PAR. 4. This pool car consigned to respondent reached Lincoln, Nebr., on October 10, 1918, and was promptly unloaded and the contents distributed by respondents. Its own commodities were placed in its warehouse, the commodities belonging to business houses outside of Lincoln were reconsigned to them by local freight, and the other purchasers in Lincoln were notified of the arrival of their goods, and promptly obtained the same, except the Basket Stores Co. The commodities belonging to this company were stored in respondent's warehouse, the Basket Stores Co. was not notified of the arrival of these goods in Lincoln or of their presence in respondent's warehouse, and no opportunity to obtain its goods was afforded the Basket Stores Co. until November 15, 1918, when respondent notified the Basket Stores Co. of the presence of its property.

PAR. 5. The Basket Stores Co. was in need of these commodities for its trade, its stock of these goods was low, and the delay in receipt due to the actions and failure of the respondent to extend to the Basket Stores Co. the same course of dealing that it used with all the other owners of commodities contained in the pool car was a hindrance and an obstruction to the Basket Stores Co. in the conduct of its business in competition with the respondent and others in the wholesale trade and with its competitors in the retail trade.

PAR. 6. On October 8, 1918, prior to the arrival of the pool car at Lincoln, the respondent, having received the statement from F. A. Snider Preserve Co. regarding the contents of the car and the distribution to be made thereof, in writing protested to the Snider Co. against the sale direct to the Basket Stores Co., and asked for the allowance of the regular jobber's profit on the sale, as though made through respondent. The Snider Co. did not reply to this letter. Subsequent to the arrival of the car at Lincoln, the distribution of its contents to the owners thereof, except as to the Basket Stores Co., and while the goods purchased by that company were in respondent's custody, respondent wrote the Snider Co., on October 22, 1918, referring to the unanswered letter and asking what it was to charge the Snider Co. for checking out, unloading, and reshipping the other jobbers' goods. It likewise wrote the Snider Co. on the same day with reference to damage to goods in transit. In response to a request from the Snider Co. for payment, respondent wrote, on November 16, declining to make payment to the Snider Co. for goods pur-

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chased from it by the respondent until reply was made by the Snider Co. to respondent's letters (of October 8 and 22) and until allowance was made respondent for the jobbers' commission on the sale to the Basket Stores Co. The Snider Co. suggested that respondent remit, taking credit for amounts claimed, and explaining fully the reasons therefor. The respondent complied, deducting, among other amounts, the sum of \$100 as commission on the sale to the Basket Stores Co. This deduction, among others, the Snider Co. refused to allow, and returned the remittance. Whereupon, on December 16, respondent wrote the Snider Co., insisting upon the allowance of this commission, protesting against the action of the Snider Co. in selling direct to the Basket Stores Co., and threatening the Snider Co. with the cessation of respondent's business and return of all the goods produced by the Snider Co. then in respondent's stock, if this commission were not allowed and the Snider Co. continued direct sales to the Basket Stores Co.

PAR. 7. Early in January following, the Snider Co. sent a representative to Lincoln, who interviewed the president of the respondent in an attempt to obtain a settlement of the controversy, which was not successful. The respondent, in accordance with the statements in its letter of December 16th, ceased to purchase from the Snider Co.

CONCLUSIONS.

The conduct of the respondent tended to, and did, unduly hinder competition between the Basket Stores Co. and others similarly engaged in business, and the intent and purpose of the respondent was also to press the F. A. Snider Co. to a selection of customers, in restraint of its trade, and to restrict the Basket Stores Co. in the purchase of commodities in competition with other buyers, and the conduct of the respondent tended to the accomplishment of the intent and purpose of respondent.

The acts and practices of the respondent, as hereinbefore set out, constitute unfair methods of competition in commerce among the States of the United States, and violate the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission being of opinion that the method of

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competition in question is prohibited by 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 having made its report in which it stated its findings as to the facts with its conclusions that the respondent has violated the provisions of said act:

It is therefore ordered, That the respondent Raymond Bros.-Clark Co., its officers and agents, forever cease and desist from directly or indirectly—

(1) Hindering or preventing any person, firm, or corporation in or from the purchase of groceries, provisions, or the like commodities direct from the manufacturers or producers thereof, in interstate commerce, or attempting so to do.

(2) Hindering or preventing any manufacturer, producer, or dealer in groceries, provisions, and the like commodities, in or from the selection of customers in interstate commerce, or attempting so to do.

(3) Influencing or attempting to influence any manufacturer, producer, or dealer in groceries, provisions, and the like commodities not to accept as a customer any firm or corporation with which the manufacturer, producer, or dealer in the exercise of a free judgment, has or may desire to have such relationship.

And it is further ordered, That the respondent Raymond Bros.-Clark Co. shall, within 60 days of the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set out.

Complaint.

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FEDERAL TRADE COMMISSION

v.

ALUMINUM COMPANY OF AMERICA.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF
AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 248—March 9, 1921.

SYLLABUS.

Where a corporation enjoying a monopoly in the manufacture and sale of pig aluminum and aluminum ingot, and also engaged, through its subsidiaries, in the manufacture and sale of sheet aluminum and products manufactured of aluminum, entered into and carried out an agreement with one of its chief competitors in the manufacture and sale of sheet aluminum, for the formation of a new corporation (the directorate of which, when formed, it controlled) to take over and operate said competitor's aluminum rolling mill, it to take two-thirds of the outstanding stock, a device successfully aimed at the acquisition of the control of said rolling mill and its products without direct acquisition of stock in said competing corporation and equivalent thereto in effect, and a device which (1) eliminated actual competition between it and its competitor in the manufacture and sale of sheet aluminum and aluminum cooking utensils, (2) prevented the new company from becoming its competitor in the manufacture and sale of sheet aluminum, (3) gave it a complete monopoly in the production and sale of certain much-used and important sizes of sheet aluminum manufactured in the United States, and tended to give it a complete monopoly of all sizes of sheet aluminum manufactured in the United States, and (4) was followed by the disappearance of a market in the United States for the sale of ingot or pig aluminum to aluminum rolling mills:

Held, That the acquisition and continued ownership of such stock, under the circumstances set forth, constituted a violation of section 7.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Aluminum Co. of America, hereinafter referred to as the respondent, has, during the year last past, violated and is violating section 7 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Aluminum Co. of America, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal

office and place of business located at the city of Pittsburgh, in said State, now and at all times hereinafter mentioned engaged in the business of manufacturing and selling aluminum and aluminum products throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Aluminum Co. of America, in the conduct of its business, manufactures the aluminum and aluminum products so sold by it in its factory located at the city of Pittsburgh, State of Pennsylvania, and after such aluminum and aluminum products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said aluminum and aluminum products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and especially to and through the city of Pittsburgh, State of Pennsylvania, and therefrom to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Aluminum Co. of America, a corporation engaged in commerce, as aforesaid, did, during the year 1918, in violation of section 7 of the Clayton Act, acquire a large part of the stock and share capital of the Aluminum Rolling Mill Co., a corporation also engaged in commerce, and that the said respondent, Aluminum Co. of America, ever since the time of said acquisition of said stock, has owned, and still does own, a large part of the stock and share capital of the said Aluminum Rolling Mill Co.; and that the effect of the acquisition of said stock and share capital, and the use of the same, either by voting or granting of proxies or otherwise, may be, and is to substantially lessen competition between the respondent, Aluminum Co. of America, and the Aluminum Rolling Mill Co., or to restrain such commerce, as aforesaid, in certain sections and communities, or tend to create a monopoly in such line of commerce.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the

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respondent, Aluminum Co. of America, charging it with a violation of section 7 of said act.

The respondent having entered its appearance by its attorneys, Messrs. Gordon & Smith, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of respondent before Mr. William A. Sutherland, an examiner of the Federal Trade Commission, theretofore duly appointed.

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent Aluminum Co. of America is a corporation organized, existing, and doing business since 1888 under the laws of the State of Pennsylvania, with its principal office in the city of Pittsburgh in said State. The authorized capitalization of respondent is \$20,000,000 (all common stock), \$18,000,000 of which is outstanding.¹ It is now and for many years since its organization has been engaged in the business of manufacturing and selling crude or pig aluminum and aluminum ingot throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries. The respondent has now and for many years has had a monopoly in the United States in said business, the competition which it has met in the United States coming from foreign companies importing crude or pig aluminum and aluminum ingot into this country. The respondent produces in the United States approximately one-half of the pig aluminum and aluminum ingot produced in the world. Pig aluminum and aluminum ingot are used for two general purposes, namely, for casting and for rolling into sheet. There is now and has been for many years in the United States a market for aluminum ingot known as secondary ingot, which is made from remelted aluminum, but such secondary ingots are not adaptable for conversion into aluminum sheet. Virgin ingot, of which the Aluminum Co. of America is now and has been for many years the only producer in the United States, is the only kind of aluminum ingot convertible into sheet aluminum. Respondent now, and for many years prior to 1918, has as a part of its business sold throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries all of the sheet aluminum manufactured by its subsidiaries for sale, and since the taking over by the Aluminum Rolling Mill Co. of the

aluminum-rolling mill of the Cleveland Metal Products Co., it has sold throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries all of the sheet aluminum produced by that mill. One-half of all of the sheet aluminum produced in the world is produced by the subsidiaries of the respondent, and the sale of the sheet aluminum produced by such subsidiaries has been and is controlled by respondent. Respondent now and for many years has had subsidiary corporations in the United States which fabricate aluminum in the form of wire, tubing, cooking utensils, and into general fabricated forms, and such subsidiaries and the respondent now and for many years have engaged in the business of selling such wire, tubing, cooking utensils, and general fabricated forms throughout the various States, Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. There are and have been since prior to 1918, in the United States, corporations in competition with the respondent and its subsidiaries in the manufacture and sale of aluminum cooking utensils, all of which companies, together with the respondent and its said subsidiaries, require sheet aluminum in the manufacture of their finished products. The sources of supply for sheet aluminum in the United States, prior to the outbreak of the European war in 1914, were from foreign companies and the respondent and its subsidiaries. In March, 1915, the Cleveland Metal Products Co., as hereinafter mentioned, became the only competitor of the respondent and its subsidiaries in the manufacture of sheet aluminum and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia, and in the latter part of 1916 the Bremer-Waltz Corporation, as hereinafter mentioned, became a competitor of the respondent and its subsidiaries in the manufacture of sheet aluminum and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia, and at or about the time that the Cleveland Metal Products Co. entered into negotiations with respondent for the sale of the former company's aluminum rolling mill, the United States Smelting & Aluminum Co. became a competitor of the respondent and its subsidiaries in the manufacture of sheet aluminum and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia. The Cleveland Metal Products Co., the Bremer-Waltz Corporation, and the United States Smelting & Aluminum Co. were the only competitors in America of the respondent and its subsidiaries in the manufacture and sale of sheet aluminum at the time the Cleveland Metal Products

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Co. disposed of its aluminum rolling mill as hereinafter mentioned, and the United States Smelting & Aluminum Co. was an inconsiderable factor in the trade.

PAR. 3. The Cleveland Metal Products Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio since 1910; and from 1910 to March 8, 1915, was engaged in the business of manufacturing enameled stove parts and enamel parts for other manufacturers using the same and in selling such parts throughout the various States and Territories of the United States and the District of Columbia. The Cleveland Foundry Co., an Ohio corporation with its principal office in Cleveland, Ohio, for many years up to January, 1917, was engaged in the business of manufacturing oil cooking stoves and oil heaters in which aluminum is used. Both of these companies, namely, the Cleveland Metal Products Co. and the Cleveland Foundry Co., used aluminum in crude and semicrude form and in the form of sheet. In January, 1917, the Cleveland Foundry Co. and the Cleveland Metal Products Co. were consolidated, the business of both companies being continued under the name of the Cleveland Metal Products Co., which by the consolidation had an authorized capitalization of \$5,000,000 in common stock and \$5,000,000 in preferred stock, \$4,000,000 of each class being issued. In 1912 the Cleveland Metal Products Co. conceived the idea of going into the business of manufacturing aluminum cooking utensils, and in the autumn of 1913 Fred W. Ramsay, president of the company, went to Europe, where he conferred with officials of various foreign companies importing aluminum ingot into this country, for the purpose of determining whether the Cleveland Metal Products Co. could obtain from sources other than respondent and its subsidiaries a supply of aluminum ingot in the event that it erected an aluminum rolling mill for the purpose of converting aluminum ingot into aluminum sheet, which aluminum sheet is the form of aluminum from which aluminum cooking utensils are made. If the Cleveland Metal Products Co. went into the business of manufacturing aluminum cooking utensils, it would be competing with subsidiaries of the Aluminum Co. of America in the sale of such utensils and with the respondent and its subsidiaries in the sale of sheet aluminum, and if it erected an aluminum rolling mill for the purpose of manufacturing its own aluminum sheet its only sources of supply of aluminum pig and aluminum ingot were from the Aluminum Co. of America or from foreign companies. The purpose of the president of the Cleveland Metal Products Co. in ascertaining whether he could buy aluminum ingot from foreign companies was to determine whether the Cleve-

land Metal Products Co. could be free and independent from the Aluminum Co. of America in the source of supply of aluminum ingot, and could compete with that company and its subsidiaries in the production and sale of aluminum sheet and in the manufacture and sale of aluminum cooking utensils. The president of the Cleveland Metal Products Co. having received assurances in Europe that his company could obtain ingot from foreign companies on satisfactory terms, returned to the United States, and in 1914 the Cleveland Metal Products Co. commenced the construction of an aluminum rolling mill. The mill was completed in 1915 and was put into operation in March of that year. It was a well-planned, well-designed, and well-working unit.

PAR. 4. The capacity of this aluminum rolling mill of the Cleveland Metal Products Co. was 250,000 pounds of aluminum sheet per month, and the mill was equipped to roll sheets of all sizes up to 60 inches in width by 120 inches in length. Twenty-seven per cent of the output of this mill was used by the Cleveland Metal Products Co. in the manufacture of its aluminum cooking utensils and other products in which sheet aluminum was necessary, and the balance of the output, 73 per cent, was sold in the open market to dealers in and users of sheet aluminum. The Cleveland Metal Products Co. thereby became and was until its rolling mill passed to respondent, in competition with respondent and its subsidiaries in the manufacture and sale in commerce of sheet aluminum and aluminum cooking utensils. A considerable part of the sheet-aluminum industry has been and is in the sale of sheet aluminum to the manufacturers of automobile bodies, in which aluminum sheet greater than 30 inches in width is necessary. The only sources of supply for such sheet in the United States from the time this rolling mill was built until shortly after the signing of the armistice of the World War on November 11, 1918, were from the respondent and its subsidiaries, the Cleveland Metal Products Co., and from small stocks of foreign companies on hand in this country when the Great War in Europe broke out. The only companies in the United States manufacturing aluminum sheet over 30 inches in width were the subsidiaries of the Aluminum Co. of America (respondent) and the Cleveland Metal Products Co., all which companies from 1915 until January of 1918 were confronted with a demand in excess of the supply. The total cost of the rolling mill erected by the Cleveland Metal Products Co., including 5,515 acres of land, the site of the mill, was \$227,154.64. From June 30, 1915, to December 31, 1915, the net profits of the Cleveland Metal Products Co. in the manufacture and sale of sheet aluminum was \$23,629.44. The net profits of the Cleveland

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Metal Products Co. in the manufacture and sale of sheet aluminum for the calendar year 1916 were \$219,009.25, and the net profits for the calendar year 1917 in the manufacture and sale of sheet aluminum were \$52,120.01. In addition, the Cleveland Metal Products Co. made a substantial profit in its general business. The sheet which it manufactured in excess of its own fabricating requirements it sold to various automobile-body builders, manufacturers of cooking utensils, and manufacturers of other products in which sheet aluminum is used. In the latter part of 1916 the Bremer-Waltz corporation, having completed a rolling mill at St. Louis, Mo., commenced the business of selling sheet aluminum which it rolled, but the largest sized sheet which its mill was capable of turning out was 30 inches in width. The United States Smelting & Aluminum Co., hereinbefore referred to, rolled aluminum sheet of a maximum width of 30 inches. In November, 1919, the Bremer-Waltz Corporation sold a part of its physical assets, consisting of its aluminum rolling mill, to the Aluminum Goods Manufacturing Co., 36 per cent of whose stock is owned by the Aluminum Co. of America and on whose directorate the Aluminum Co. of America is represented by two members. The Aluminum Goods Manufacturing Co. prior to the purchase by it of the rolling mill of the Bremer-Waltz Corporation had and still has two rolling mills, all of the output of which, together with all of the output of the mill purchased from the Bremer-Waltz Corporation, is used by the Aluminum Goods Manufacturing Co. itself in the manufacture of the finished products made by it, consisting principally of cooking utensils.

PAR. 5. Since 1917 the supply of aluminum sheet imported into this country and that manufactured in this country has not been equal to the demand.

PAR. 6. On February 17, 1918, the Aluminum Co. of America (respondent) and the Cleveland Metal Products Co. agreed to organize a third corporation under the laws of the State of Ohio, which third corporation was to purchase the aluminum rolling mill and the aluminum rolling-mill business of the Cleveland Metal Products Co. This corporation was not organized until March 20, 1918, although the rolling mill of the Cleveland Metal Products Co. was operated by the respondent, Aluminum Co. of America, for the new company from February 23, 1918, until and since the date of the incorporation of the new company, which new company was incorporated under the name "The Aluminum Rolling Mill Co." During the negotiations for the sale by the Cleveland Metal Products Co. of its aluminum rolling mill to the Aluminum Rolling Mill Co., the president of the Cleveland Metal Products Co. expressed to officers

of the respondent a wish for an assurance that if the Cleveland Metal Products Co. went out of business of rolling sheet aluminum, it, the Cleveland Metal Products Co., would have a source of supply from the respondent for its own needs in the manufacture of cooking utensils and such other things requiring sheet aluminum as it made, which assurance was given to the Cleveland Metal Products Co. during the negotiations aforesaid. The Aluminum Rolling Mill Co. has an authorized capitalization of \$1,000,000, all common, \$600,000 of which is outstanding; \$400,000 of the outstanding capital stock was acquired by the respondent, the Aluminum Co. of America, at the formation of the Aluminum Rolling Mill Co., at which time the Cleveland Metal Products Co. acquired \$200,000 worth of said stock. Both the Cleveland Metal Products Co. and the Aluminum Co. of America still own the stock acquired by them at the organization of the Aluminum Rolling Mill Co. The Aluminum Rolling Mill Co. paid to the Cleveland Metal Products Co. \$34,890.70 over and above the original cost of the land and buildings purchased by it, no depreciation having been deducted from the original cost of the buildings and equipment. The board of directors of the Aluminum Rolling Mill Co. consists of seven members, four of whom have at all times represented the Aluminum Co. of America, and three of whom have represented the Cleveland Metal Products Co. The qualifying shares of stock for the four directors representing the Aluminum Co. of America, although standing in the names of those respective directors, have been assigned in blank to, have been paid for, and are and have been in the custody of the Aluminum Co. of America.

PAR. 7. Fred W. Ramsay, president of the Cleveland Metal Products Co., is president also of the Aluminum Rolling Mill Co., and although the Aluminum Rolling Mill Co. has produced more sheet aluminum than the Cleveland Metal Products Co. needs, the latter-named company, because of the control by the respondent of the Aluminum Rolling Mill Co., has not been able to secure from the Aluminum Rolling Mill Co. all of the sheet aluminum which it, the Cleveland Metal Products Co., has needed for the manufacture of aluminum cooking utensils and similar products.

PAR. 8. When the Cleveland Metal Products Co. commenced the operation of its aluminum rolling mill in 1915, its supply of ingots was obtained from stocks of foreign companies on hand in this country, and when that source of supply was exhausted, it was compelled to and did purchase ingot from the Aluminum Co. of America, because that was the only source of supply. All of the pig aluminum and aluminum ingot used by the Aluminum Rolling Mill Co. has been purchased from the Aluminum Co. of America.

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PAR. 9. After the sale by the Cleveland Metal Products Co. to the Aluminum Rolling Mill Co. of the rolling mill of the former it (the Cleveland Metal Products Co.) continued in and is still in the business of manufacturing and selling aluminum cooking utensils, enameled stove parts, enameled parts for oil stoves and heaters, but has since the sale of said rolling mill ceased purchasing aluminum ingot for the purpose of rolling the same into aluminum sheet, and since the sale of said rolling mill the Cleveland Metal Products Co. has ceased manufacturing and selling sheet aluminum.

PAR. 10. While the supply of sheet aluminum since 1917, and particularly since the signing of the armistice on November 11, 1918, has been inadequate for the demand there has been, particularly since the early part of 1919, no market in this country for the sale of ingot or pig aluminum to aluminum rolling mills because all of them with the exception of one, namely, the United States Smelting & Aluminum Co., an inconsiderable factor in the trade, are owned or controlled by the respondent, the Aluminum Co. of America.

PAR. 11. The rolling mill of the Cleveland Metal Products Co. sold to the Aluminum Rolling Mill Co., being located in Cleveland, Ohio, was close to large automobile manufacturing companies using large amounts of sheet aluminum, and it was an advantage to the Aluminum Co. of America to have a rolling mill in Cleveland, because it had none in that territory prior to the formation of the Aluminum Rolling Mill Co.

PAR. 12. The creation of the Aluminum Rolling Mill Co., by agreement between the respondent and the Cleveland Metal Products Co., and the acquisition by respondent of a controlling interest in the Aluminum Rolling Mill Co., and the transfer to the latter company by the Cleveland Metal Products Co. of its rolling mill and business in the products thereof, was a device for the accomplishment of the purpose of the respondent to obtain control of the said rolling mill and business in its products instead of the direct acquisition of stock in the Cleveland Metal Products Co., and was in effect equivalent thereto; the result of the use of this device, as completely as though the respondent had obtained a controlling stock interest in the Cleveland Metal Products Co., was to eliminate the actual, existing competition between the respondent and the Cleveland Metal Products Co. in the manufacture and sale in interstate commerce of sheet aluminum and aluminum cooking utensils, to prevent the Aluminum Rolling Mill Co. from becoming a competitor of the respondent in the manufacture and in the sale in interstate commerce of sheet aluminum, and tended to and did create in the respondent a monopoly in the manufacture and sale in interstate commerce of sheet aluminum.

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PAR. 13. The acquisition and continued ownership by respondent of the controlling interest in the stock of the Aluminum Rolling Mill Co. tended to and did bring about a complete monopoly in the respondent of the production and sale of sheet aluminum of certain much-used and important sizes manufactured in the United States, and tended to bring about a complete monopoly in the respondent of the sale, in interstate commerce, of all sizes of sheet aluminum manufactured in the United States.

CONCLUSION.

The acquisition and the continued ownership by the respondent, the Aluminum Co. of America, of two-thirds of the outstanding capital stock of the Aluminum Rolling Mill Co., under the conditions and circumstances described in the foregoing findings constitute a violation of section 7 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO DIVEST STOCK.

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated section 7 of the provisions of the act of Congress, approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,"

It is now ordered, That the respondent, Aluminum Co. of America, shall within one year from the day of the date hereof divest itself in good faith of all the stock in the Aluminum Rolling Mill Co. owned by it by selling and by absolutely disposing of the same; but such stock or any part thereof shall not be sold to:

(1) Any stockholder, or officer, director, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of the respondent.

(2) Any stockholder in, or officer or director or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of any of the subsidiaries of or any of the corporations associated with the respondent.

(3) Any stockholder in, or officer, director, or agent of, or anyone otherwise directly or indirectly connected with or under the control of any corporation in which the respondent, or in which any subsidiary or associate company of respondent owns stock.

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(4) Any corporation in which the respondent, or in which any of the subsidiary or associate companies of the respondent owns stock, or to any corporation which owns stock in any corporation owned or controlled directly or indirectly by or under the influence directly or indirectly of the respondent.

(5) Any corporation engaged in any branch of the aluminum industry in which any stockholder, officer, director or agent of, or anyone directly or indirectly under the control or influence of the respondent owns stock.

(6) Any corporation engaged in any branch of the aluminum industry in which any stockholder, officer, director, or agent of, or anyone directly or indirectly under the control or influence of any of the respondent's subsidiary or associate companies own stock:

Provided, That nothing herein contained shall prohibit the respondent from selling the said stock or any part thereof to the Cleveland Metal Products Co., its officers, directors, stockholders, or agents.

It is further ordered, That the respondent, Aluminum Co. of America, shall within 13 months after the day of the date of the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been conformed to.

UNITED STATES COLOR & CHEMICAL CO., INC.

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Complaint.

FEDERAL TRADE COMMISSION

v.

UNITED STATES COLOR & CHEMICAL CO., INC.