

Complaint.

FEDERAL TRADE COMMISSION

v.

BAEDER, ADAMSON COMPANY.

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

Docket 787—November 22, 1921.

SYLLABUS.

Where a corporation, engaged in the manufacture and sale of glue, paid to the cabinet department superintendent of one of the largest glue purchasers in the United States, without the knowledge or consent of said purchaser, a secret so-called "commission" of 5 cents a pound on all glue bought of it by his employer; with the result that it secured and held said purchaser's business, not theretofore enjoyed by it, excluded therefrom, arbitrarily and without just cause, a theretofore satisfactory competitor, as well as all other competitors, established a price to said purchaser not justified by competitive conditions, and diverted to said employee many thousands of dollars paid by his employer for glue:

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

COMPLAINT.

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

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Massachusetts, with principal place of business at Philadelphia, Pa.

PAR. 2. That respondent is engaged in the business of manufacturing and selling glue, sandpapers, emery papers, etc., and causes commodities sold by it to be transported to the purchasers thereof, from the State of Pennsylvania, through and into other States of the United States, and carries on such business in direct active competition with other businesses, partnerships, and corporations similarly engaged.

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PAR. 3. That respondent in the course of its business as described in paragraph two hereof, gives and has given to superintendents, and other employees of proprietors of cabinet manufacturing establishments, and other establishments, without the knowledge and consent of the employers of such superintendents and other employees, cash commissions or gratuities, usually amounting to five cents per pound for all glue sold to said establishment by respondent, to induce such superintendents and employees to favor and recommend, and influence their employers to purchase, the products of respondent, and to refrain from purchasing the products of its competitors, and without other consideration therefor; that the total sales of glue made by respondent exceeds \$500,000 annually; that such cash commissions and gratuities so given by respondent to the superintendent of the cabinet factory and to other employees of one of its customers, to wit, the Victor Talking Machine Co., of Camden, N. J., during the two-year period ending January 1, 1921, aggregated approximately \$34,000, which resulted from the payment of a cash commission of 5 cents per pound on all glue sold by respondent, to such customer, for which glue respondent received 35 cents per pound; that respondent adds to its annual cost of doing business a sum equal to that paid out for cash commissions and gratuities as aforesaid, and is compelled to, and does add to the selling price of commodities sold by it, an amount sufficient to cover the amount so paid out for cash commissions and gratuities, which is in addition to the fair market value of such commodities, and which additional amount the customers of respondent, and eventually the purchasing public, must pay; that as a further result of respondent's said practices, all of its competitors are injuriously affected and hindered in the exercise of free and fair competition; that the methods used by the respondent tend to lessen free and fair competition by requiring competitors of respondent to give to employees of customers and prospective customers, cash commissions and gratuities of substantially like amounts to those paid by respondent as aforesaid, for the same purposes, and with the same effect, as a means of protecting their trade, and preventing respondent from obtaining the business enjoyed by them, or incurring a serious risk of loss in business without reference to the merits or prices of their several products.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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

The respondent, Baeder, Adamson & Co., having entered its appearance by its attorneys, Tower, Talbot & Hiler, and filed its answer herein denying certain allegations of the complainant, and admitting others, and having stipulated of record certain facts wherein it is agreed among other things, "that the complaint in this case shall stand and be regarded as having been issued against Baeder, Adamson Co., the correct name of the respondent;" that on the pleadings and this agreement and the stipulations as to records, facts, and evidence, the examiner may proceed to make his report and proposed findings as to the facts and conclusion thereon, and that the Commission may enter such order herein as may find proper support in such pleadings, agreements, and stipulation as to records, facts, and evidence, without the introduction of oral or other testimony, as to said matters so stipulated of record. And thereupon this proceeding came on for final hearing upon the argument and briefs of counsel for the Commission and respondent, respectively; and the Commission having fully considered the record and argument of counsel, and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Baeder, Adamson Co., is a corporation organized under the laws of the State of Massachusetts, in November, 1919, with its principal place of business in the city of Boston, State of Massachusetts, with branch offices in the cities of Philadelphia, Pa., and Chicago, Ill.; that Baeder, Adamson & Co. was the name by which the respondent, Baeder, Adamson Co. was cited to appear and answer in this proceeding, which said firm was a partnership composed of William B. Adamson and William Adamson, and had its principal office and place of business at Philadelphia, Pa., with branch offices at Boston and Chicago; that the business of said partnership of Baeder, Adamson & Co. was taken over by the respondent, Baeder, Adamson Co. October 1, 1919, and carried on with only minor changes at the time of the filing of the complaint

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in this case, and in accordance with agreement herein, Baeder, Adamson Co. is substituted for Baeder, Adamson & Co., and hereinafter referred to as the respondent.

PAR. 2. That said Baeder, Adamson & Co., partnership, and its successor, Baeder, Adamson Co., corporation, for three years prior to the filing of the complaint herein, have been and are engaged in the manufacture and sale of glue and other products, and in carrying on said business, have caused its said products to be sold and transported throughout the various States of the United States, in direct competition with other persons, firms, partnerships, and corporations similarly engaged.

PAR. 3. That about February 1, 1919, the sales manager of Baeder, Adamson & Co., one W. C. Jenkins, reported to William B. Adamson and William Adamson, partners aforesaid, at their office in Philadelphia, Pa., that for the payment of a "commission" of 5 per cent, he, Jenkins, could secure for respondent, the glue business of the Victor Talking Machine Co., of Camden, N. J., one of the largest glue purchasers in the United States, using as much as 300,000 pounds of glue per annum, or more than \$100,000 worth, which said proposition of Jenkins was agreed to by the said Adamsons and arrangements were immediately made by Jenkins with one Charles W. Davis, now deceased, to pay such commissions on said sales to him as an "intermediary," and did so pay them to him.

PAR. 4. That the Victor Talking Machine Co. in January, 1919, and for a number of years prior thereto, was and had been buying its joint glue for its cabinet-manufacturing department from a glue concern by the name of Milligan & Higgins, located in New York City, N. Y., which glue was manufactured, sold, and shipped by them from time to time from New York City to the Victor Talking Machine Co. at their factory in Camden, State of New Jersey.

PAR. 5. That immediately following the report of Jenkins to the Adamsons to pay said so-called "commissions" in the manner suggested, and its approval by them, to wit, on or about February 1, 1919, the superintendent of the cabinet factory of the Victor Talking Machine Co., who in the operations of its system of factory management had the final decision as to what glue should be bought by the purchasing department of said company, reported to said department that the glue of said Milligan & Higgins, then being used by the Victor Co., had "gone bad," or failed to work satisfactorily, and suggested to the said purchasing department the necessity of forthwith procuring other glue for the work, and then suggested that they procure glue from Baeder, Adamson & Co.

PAR. 6. That immediately thereafter, and until 1920, the factory superintendent's requisition slips for glue all called for Baeder, Adamson & Co.'s glue, and in accordance with such requisition the glue of said company was purchased from time to time during the year 1919 on separate open orders to the total exclusion from said trade of Baeder, Adamson & Co.'s competitors, Milligan & Higgins, who had theretofore furnished said Victor Talking Machine Co. glue, as above stated, as well as all other competitors, of which there were many in the United States, manufacturing and selling glue of the desired kind and quality.

PAR. 7. That such sales of glue to the Victor Co. were made by Baeder, Adamson & Co. from February 1, 1919, to May, 1919, following the arrangement to pay "commissions" thereon, as aforesaid, without a call by any of the salesmen or representatives of Baeder, Adamson & Co. upon the purchasing department of the Victor Co. to solicit their trade, and had not made any such call since February, 1918; that said sales continued uninterruptedly without competitive bids or reported testing of glues by the said superintendent of the Victor Co., under whose jurisdiction tests of glue were made, although the purchasing department of the said company made earnest efforts to have tests made and reported on with a view of procuring competitive bids on the kind of glue desired.

PAR. 8. That when Jenkins, employee of Baeder, Adamson & Co., aforesaid, made the first tender of payment to "said intermediary," Davis, as "commission" on account of said sales, Davis objected to the payment of same on the basis of 5 per cent, claiming that the arrangement and agreement was to be on the basis of 5 cents per pound, that Jenkins immediately reported said claim of Davis to William B. and William Adamson, of the firm of Baeder, Adamson & Co., and procured their approval to pay 5 cents per pound on sales of glue to the Victor Co. as "commissions" to Davis, intermediary aforesaid, instead of the 5 per cent rate above mentioned; that accordingly said "commissions" were paid to Davis, based on actual invoices and amount of glue sold by Baeder, Adamson & Co. and its successor, Baeder, Adamson & Co., throughout the year and up to March, 1920, the same being made on numerous separate purchase orders received and filed from time to time, generally in 10-barrel lots, and from March, 1920, on the basis of deliveries from time to time made under a contract or purchase agreement then entered into by and between respondents and the Victor Co. for 1,000 barrels of glue.

PAR. 9. That knowledge of the arrangement to pay said so-called "commissions" was possessed by certain employees of Baeder,

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Adamson & Co., among them being George H. Sautter, assistant sales manager, and Robert Focht, bill clerk, T. Wilford Schofield, auditor, and R. C. Baldwin, a bookkeeper, knew of such payments but did not know definitely what actually became of the money.

PAR. 10. That in paying such "commissions" from February 1, 1919, to January 1, 1921, Jenkins at various times personally advanced sums of money on account of such payments due or to become due to said Davis, "intermediary," and at irregular intervals, vouchers were made up for the payments due and paid or to be paid by said Jenkins as for "commissions paid on glue sales," which vouchers were regularly approved in writing by the said auditor of the partnership and of the respondent, Baeder, Adamson & Co., and with few exceptions also approved by either William B. Adamson and William Adamson for the partnership and by William Adamson for Baeder, Adamson Co., respondents.

PAR. 11. That after said Baeder, Adamson & Co., partnership, was succeeded by Baeder, Adamson Co., corporation, William Adamson of the partnership company became president and general manager of the Baeder, Adamson Co., the corporation, and Jenkins continued to pay said "commissions" to Davis, "intermediary," the money for same being drawn on vouchers approved by the said auditor, and by William Adamson, president and general manager aforesaid, until January 1, 1921.

PAR. 12. That the following is a copy of the first voucher on which such payments of "commissions" were made, being voucher No. 41871, and calculation made on the basis of 5 cents per pound glue.

Baeder, Adamson & Co.

Philadelphia.

MAR. 13, 1919.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

5% allowances to Victor Talking Machine Co. on purchases as follows:

2/19/19-----	\$4,858.00
2/24/19-----	4,353.00
2/28/19-----	5,086.00
3/ 5/19-----	5,039.00
3/10/19-----	5,090.00
3/12/19-----	4,058.00

29,384.00 \$1,469.20

Entered on V. B. folio _____. By _____. Paid by check ____.

Approved for payment:

W. C. JENKINS, *Manager*.

Examined and found correct: .

T. WILFORD SCHOFIELD, *Auditor*.

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Received — —, 19—, from Bader, Adamson & Co., fourteen hundred sixty-nine & 20/100 dollars in full for above account.

\$1,469.20

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 41871.

Date paid Mar. 13, 1919.

Wm. C. Jenkins.

PAR. 13. That the following is a sample and copy of such vouchers of the aforesaid partnership approved by William B. Adamson, being voucher No. 42247.

Baeder, Adamson & Co.

Philadelphia.

APRIL 22, 1919.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

Commissions paid on glue sales----- \$970.90

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

Examined and found correct:

W. B. ADAMSON, *Manager*.

T. WILFORD SCHOFIELD, *Auditor*.

Received — —, 19—, from Baeder, Adamson & Co. nine hundred seventy & 90/100 dollars in full for above account.

\$970.90.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 42247.

Date paid Apr. 22, 1919.

\$970.90.

Wm. C. Jenkins.

Classification.

Phila.

\$970.90.

(Attached lead pencil slip reads as follows:)

3/31 -----	4, 874
4/3 -----	4, 861
4/9 -----	4, 845
4/14 -----	4, 838

19, 418

5

970.90

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PAR. 14. That a sample of such vouchers of the partnership, approved by William Adamson, is as follows, being voucher No. 43489:

Baeder, Adamson & Co.

Philadelphia.

AUGUST 30, 1919.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

For commissions paid on glue sales----- \$1,265.65

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

Examined and found correct:

WM. ADAMSON, *Manager*.

T. WILFORD SCHOFIELD, *Auditor*.

Received — —, 19—, from Baeder, Adamson & Co., twelve hundred sixty-five and 65/100 dollars, in full for above account.

\$1,265.65.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 43489.

Date paid Sept. 2, 1919.

\$1,265.65.

Wm. C. Jenkins.

Classification. Phila. Br. \$1,265.65.

PAR. 15. That a sample of said vouchers after the taking over of the business by the respondent corporation is as follows, being voucher No. 463:

Baeder, Adamson & Co.

Philadelphia.

Nov. 21, 1919.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

Commissions paid on glue sales----- \$2,319.65

Entered on V. B. folio ——. By ——. Paid by check —.

Approved for payment:

Examined and found correct:

WM. ADAMSON, *Manager*.

T. WILFORD SCHOFIELD, *Auditor*.

Received — —, 19—, from Baeder, Adamson & Co., twenty-three hundred nineteen & 65/100 dollars in full for above account.

\$2,319.65.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

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(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 463.

Date paid Nov. 21, 1919.

Wm. C. Jenkins.

Classification. Phila. branch. \$2,319.65.

PAR. 16. That one of these vouchers approved by William Adamson, president of the corporation, as of July 14, 1920, is as follows, being voucher No. 3408:

Baeder, Adamson & Co.

Philadelphia.

JULY 14, 1920.

New York.

Boston.

To WM. C. JENKINS, Dr.

Chicago.

Commissions paid on glue sales..... \$994.35

Entered on V. B. folio——. By——. Paid by check——.

Approved for payment:

Examined and found correct:

WM. ADAMSON, *Manager*.T. WILFORD SCHOFIELD, *Auditor*.

Received ——, 19——, from Baeder, Adamson & Co., nine hundred ninety-four & 35/100 dollars in full for above account.

\$994.35.

W. C. JENKINS.

NOTE.—Please date, sign and return without delay to the auditor, Allegheny Ave. and Richmond St., Philadelphia.

Do not detach any papers.

(Indorsed on back:)

Baeder, Adamson & Co.

Voucher No. 3408.

Date paid ——.

\$994.35.

Wm. C. Jenkins.

Classification. Phila. a/c. \$994.35.

PAR. 17. That on the books of the respondent and its predecessor partnership, appear, among other entries and memoranda relating to these "commissions" and this account, the following:

From the ledger of the partnership—

Date.	Items.	Folio.	Amts. in dol. & cts.
Mar. 31	Glue sales, V. T. M. Co	DB147	
" "	Transfer.		
	Sd. ppr. sales, V. T. M. C.....	"	

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From the daybook of Baeder, Adamson & Co.—

Page 147—\$154.18, Mar 31, 1919.

Commissions a/c to sd. ppr. sales.

(Above are transfers), commission paid in re Victor Talking Machine Co., which have been previously charged to sales accounts.

Page 151—\$970.90, Apr. 30, 1919.

Commission a/c—on glue sales (Victor).

Page 154—\$745.20, May 17, 1919.

\$1,037.30.

Commissions (W. C. J. on glue sales V. T. M. Co.).

Page 183—\$1,201.30, Sept. 30, 1919.

Commission a/c (paid by W. C. Jenkins—Glue a/c).

PAR. 18. That amounts so paid out by respondent and its predecessor, Baeder, Adamson & Co., covering such sales and deliveries from February 1, 1919, to January 1, 1921, on account of such so-called "commissions" aggregated about the sum of \$34,000; that no part of amount so paid in "commissions" as aforesaid was ever received by or reached the corporate treasury of the Victor Talking Machine Co., and no part of same has or ever was authorized by said company to be received by any one for it, or by any one of its employees, nor prior to the investigation by the Federal Trade Commission into the charges alleged in the complaint in this case, had the said Victor Co. any knowledge or intimation that any of its employees were receiving any such secret "commissions" as aforesaid on its said purchases of glue.

PAR. 19. That in March, 1921, respondent Baeder, Adamson Co. tendered the supposed beneficiary of the Victor Talking Machine Co., the sum of \$750, being the balance of said "commissions" due it under the agreement heretofore referred to, which had accrued after Jenkins had been dismissed by the respondent, and at the same time made a reduction of 5 cents per pound on all deliveries of glue to the Victor Co. made subsequent to January 1, 1921, that such reduction was not made on account of the quality or market price of the glue so sold to the Victor Co.; that said \$750 "commissions" referred to were then paid to the Victor Talking Machine Co. direct, as a part of the 5 cents per pound reduction made on its sales to the Victor Co. after January 1, 1921, as above stated.

PAR. 20. That the purchases of joint glue by the Victor Talking Machine Co. made from the respondent and its predecessor, Baeder, Adamson & Co., from February 1, 1919, to March 4, 1921, at the rate or price of 35 cents per pound, on which its so-called "commissions" were paid as aforesaid, which will more particularly appear from the stipulations in this proceeding (pp. 28-30 inclusive),¹ given in pound totals were as follows:

¹ Not printed.

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	Pounds.
In the year 1919-----	329, 799
In the year 1920-----	313, 668
In the year 1921-----	20, 392
Total-----	663, 857

PAR. 21. That on or about February 1, 1919, after the cabinet department of the Victor Co. had reported Milligan & Higgins' glue as unsatisfactory, Charles Blake, salesman for Milligan & Higgins, immediately took samples of such glue and tested same, and found the said glue equal in all respects to any glue which his said company had been supplying, and which had been for years previously accepted and used by the said cabinet department of the Victor Talking Machine Co.; that Blake reported the results of his tests of the glue furnished by his said company to the purchasing department of the Victor Co., and also to the superintendent of the cabinet department; that at this time Blake requested permission, and in which request he was joined by the purchasing department of the Victor Talking Machine Co., to go into the said cabinet department of the said Victor Co., and make tests and demonstrations with his said glue; that said requests made by Blake were peremptorily refused by the then superintendent of the said cabinet department, one Eugene T. Kieffer, and Kieffer's refusal to permit Blake to make said tests, was accompanied by "such discourteous language and insinuations" that Blake refused to have any further dealings with said superintendent looking to secure the trade of said Victor Co. though importuned to do so by the purchasing department of the Victor Talking Machine Co.

PAR. 22. That in the summer of 1920, when some trouble was reported with respondent's glue by the Victor cabinet factory superintendent, respondent's representatives were, at the suggestion of said cabinet factory superintendent, afforded every opportunity to make tests and rectify the trouble, and substitute material, such tests and experiments running over a period of weeks.

PAR. 23. That the glue sold by respondent and its predecessor to the Victor Talking Machine Co. was either glue made for it by the Tunnell Co., of Philadelphia, or glue bought from The Eastern Tanners Glue Co., of Gowanda, N. Y., with small purchases from two or three other concerns.

PAR. 24. That the costs to the Baeder, Adamson Co. of all the glue made for it by Tunnell & Co. for the year ending June 30, 1920, as billed to it by the Tunnell Co., including the 2 cents per pound for making, was \$0.2851 per pound, as to which figure as

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final price there exists a controversy at this time, the respondent claiming said figure to be in fact too high, the billing price for the period from July 1, 1920, to February 28, 1921, being \$0.335696 per pound, about which a similar controversy and contention exists.

PAR. 25. That of the glue bought by the respondent of The Eastern Tanners Glue Co., of Gowanda, N. Y., the only invoices of purchases in 1919 of grade C, clear, ground glue (which was the glue respondent reports as having furnished the Victor Co.) are of 153 barrels, which cost respondent \$0.2588 per pound plus freight amounting approximately to one-fourth of a cent per pound. Not all of the 153 barrels were sold to the Victor Co. The other purchases by the respondent from The Eastern Tanners Glue Co. in 1919 were of lower grades of glue and amounted to about 523,000 pounds, or about 1,047 barrels, at \$0.1849 and \$0.2218 per pound for the two other grades purchased (E and D). That some of The Eastern Tanners Glue Co.'s glue furnished by respondent and its predecessor to the Victor people was glue of earlier purchase, which had cost respondent's predecessor more per pound than the above-stated price for grade C glue.

PAR. 26. That respondent and its predecessor, from July 1, 1919, to July 1, 1920, had manufactured for them by F. W. Tunnell & Co., at Philadelphia, 1,000,000 pounds of glue, of which approximately 50,000 pounds was No. 1 extra, 150,000 pounds was No. 1, 200,000 pounds Nos. 1½ and 1¾, a lower grade, and approximately 600,000 pounds was their so-called "one cross," or their standard quality.

PAR. 27. Of the glue furnished by Baeder, Adamson Co. or its predecessor, to the Victor Co., on eight lots looked up by the Baeder, Adamson auditor, the tests were:

4 at 186,
3 at 190,
1 at 195,

which the auditor of respondent believes is a reasonably close average as said glue was furnished and running.

PAR. 28. That sales of glue by respondent and its predecessor for each of the years 1919 and 1920 (including all grades and kinds of glue, whether hide, bone, et cetera) were as follows:

1919-----	\$688, 132. 62
1920-----	754, 206. 31

PAR. 29. That the American glue price lists, which were subject to a discount of 2 per cent for cash, for the various periods as indicated between February, 1919, and June, 1920, are as follows on the two tests stated:

	186 jelly.	196 jelly.
February, 1919.....	30	32
May, 1919.....	32	34
December, 1919.....	30	32
February, 1920.....	30	32
April, 1920.....	32	34
May, 1920.....	32	34
June, 1920.....	32	34

PAR. 30. During some of the time while the Victor Co. was paying 35 cents or about that figure per pound for its glue from respondent and its predecessor, similar glue was being offered and sold generally by one concern at about 26 cents per pound and by another concern at about 28 to 30 cents a pound, said concerns being the two which, as above stated, furnished respondents most of the glue which was sold by respondent or its predecessor to the Victor Co., to wit, F. W. Tunnell & Co., of Philadelphia, and the Eastern Tanners Glue Co., of Gowanda, N. Y.

PAR. 31. That during the late World War, the United States Government certified certain glues as suitable for airplane construction; that the glues furnished the Victor Co. by respondent and its predecessor was of a "somewhat lower quality" than the grade as certified by the Government for its airplane work, but was a high-grade glue; that the glue of Milligan & Higgins aforesaid furnished the Victor Talking Machine Co., up to February 1, 1919, was of a high test and better quality than such Government certified grade; that under the tests used by a certain glue manufacturer, Delaney & Co., of Philadelphia, of glue to be certified under United States Government tests, the viscosity and shot or jelly tests showed 19 and 190, respectively; that during the period respondent's glue was used by the Victor Co., glues of Delaney & Co. aforesaid were reported unsatisfactory by the cabinet testing department of the Victor Co., which glues tested as high as 195, 205, 215, 229, and 235, shot or jelly, with a viscosity of 25 to 30.

PAR. 32. That when the business of the partnership company was succeeded by the respondent corporation, namely, October 1, 1919, William B. Adamson became a director and William Adamson became its president and general manager, and W. C. Jenkins continued as its sales manager, and each said official continued in that capacity until January 15, 1921, when Jenkins was dismissed from the respondent's employ and William Adamson was divested of all authority, but remained as president aforesaid until July 6, 1921.

PAR. 33. That in June or July, 1920, and previous, Mr. George Upton, who represented 95 per cent of the stock of the respondent corporation, discovered from the books of the said company that a

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5 cents per pound "commission" on sales of glue to the Victor Talking Machine Co. appeared thereon, and he endeavored to ascertain the facts in regard thereto from William Adamson and William B. Adamson and from T. Wilford Schofield, auditor of respondent company, but failed to "obtain from any of them any definite information as to what this account actually was or why it had been started."

PAR. 34. That in October, 1920, Upton learned from Jenkins that all the moneys showed by respondent's books and those of its predecessor partnership to have been received by him, Jenkins, as "commissions," had been paid over by him to obtain and hold the glue account of the said Victor Talking Machine Co., and in said interview Jenkins stated that "Kieffer is my man," referring to the Victor Co.'s employee in the cabinet department, and that he was a "pretty slippery sort of individual" and "that it was a question if he would be able to hold the Victor account indefinitely or not."

PAR. 35. That Jenkins, general sales manager, aforesaid, for the years 1919 and 1920, received as salary from respondent and its predecessor the sum of \$10,000 and as traveling expenses a maximum sum of \$10,000.

PAR. 36. That George Upton, under his general authority as general manager of and for the company owning ninety-five (95) per cent of the stock of respondent, had full and complete authority to deal with and act as to the matters and practices hereinbefore referred to touching the payment of secret "commissions" to employees of customers, to secure trade, but up to the closing of the formal hearings in this case, namely, August 10, 1921, no action had been taken by the directors of said company or the respondent company in regard to the practices—paying secret "commissions," etc., heretofore referred to—unless accepting the resignation of William B. Adamson as president and general manager, and the dismissal of Jenkins aforesaid, may be so considered.¹

CONCLUSION.

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

¹ The paragraph is printed as amended by the Commission February 8, 1922.

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Order.

ORDER TO CEASE AND DESIST.

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

It is ordered, That the respondent, Baeder, Adamson Co., its officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly giving or offering to give gratuities, such as money, so-called "commissions," or other thing equivalent to money, to employees of its customers or prospective customers, without the knowledge and consent of their respective employers, as an inducement to influence their employers to purchase or to contract to purchase from respondent, joint glue, or any kind of glue or other commodity sold by respondent, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent without other consideration therefor.

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FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

4 F. T. C.

FEDERAL TRADE COMMISSION

v.

TOUSEY VARNISH COMPANY.