

## FEDERAL TRADE COMMISSION

v.

## SOUTHERN HARDWARE JOBBERS' ASSOCIATION ET AL.

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

Docket 603—May 9, 1922.

## SYLLABUS.

- Where an unincorporated association of jobbers and wholesale dealers in hardware, including a large majority of the dealers at wholesale in its territory (most of whom also sold at retail), whose membership was restricted to concerns purchasing, selling, and distributing through so-called regular channels of trade, and whose members refused to purchase from manufacturers selling to nonmembers; for the purpose of enjoining upon the trade the methods approved by it and of hindering the competition of others,
- (a) Conducted a system of espionage for the discovery of sales to nonmembers;
  - (b) Informed manufacturers of its disapproval of such sales;
  - (c) Made known its membership policy to hardware manufacturers who were members of the National Association;
  - (d) Published in trade directories of general circulation among manufacturers of hardware its membership as a list of "legitimate" jobbers;
  - (e) Furnished to the National Association of hardware manufacturers, which deferred to it in the matter, lists of those whom it considered entitled and those not entitled, to purchase on regular jobbers' terms and conditions;
  - (f) Declined to admit to membership a corporation organized and designed to act as a wholesale purchasing agency for a cooperative association of a large number of retail dealers in hardware, formed for the purpose of dealing directly with manufacturers and of thereby securing the benefits of direct dealing and enabling them to compete successfully with catalogue and mail-order houses and with such regular jobbers as also sold at retail;
  - (g) Informed a jobber member who was offered the presidency of such purchasing agency that his own business would suffer if he accepted the same, and that he would be expected to resign from the association, with the result that he declined the position;
  - (h) Notified the manufacturers of hardware and their national association that by reason of the distributing policy of said agency and cooperative association, the services of jobbers would be partly eliminated, that neither of them was a member of the jobbers' association, and that sales to either would be regarded as unfriendly acts affording a reason for their refusal to make further purchases; and
  - (i) Sought to secure the publication in trade journals of derogatory matter intended to cause hardware manufacturers to refuse to sell to those whose business methods were not approved, and especially to said concerns;
- With the result that a large number of manufacturers refused to complete orders of said concerns theretofore accepted by them, others either were with difficulty induced to fill them, or refused to have any dealings with said concerns, notwithstanding their offer to purchase in car-load lots and otherwise conform to all their requirements with respect to sales to so-called

regular jobbers, an attempt to secure supplies by purchasing through a jobber member on a cost and commission basis failed due to the manufacturers' refusal to continue to supply the jobber for that purpose, said concerns and their stockholders were compelled to purchase as retailers from their competitors, the jobber members, upon the same terms and conditions given by said members to their own retail customers, and competition in the distribution and sale of hardware and allied commodities was thereby unduly hindered;

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

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King and John Donnan, all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Southern Hardware Jobbers' Association, is a voluntary association, the members of which, about 350 in number, are persons, partnerships, and corporations engaged in the business of buying and selling hardware in wholesale quantities throughout certain southern States of the United States; that the respondents George E. King and John Donnan are president and secretary, respectively, of said respondent, the Southern Hardware Jobbers' Association; that the respondent, King Hardware Co., a corporation, the Beck & Gregg Hardware Co., Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., partnerships, are members of the respondent, Southern Hardware Jobbers' Association, and are engaged in the business of buying and selling hardware in wholesale quantities in the city of Atlanta, State of Georgia, and purchase hardware in the various States of the United States and cause same to be transported therefrom to the State of Georgia, where the products and commodities are resold by said respondents to purchasers in the State of Georgia and other States adjacent thereto, and said respondents cause said products and commodities to be transported when resold, from the State of Georgia

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through and into other States of the United States. That the members of said Southern Hardware Jobbers' Association are so numerous that all of said members can not, without manifest inconvenience and oppressive delay, be made respondents herein, but the members which are made respondents herein are fairly representative of the entire membership.

PAR. 2. That certain retail dealers in hardware in the State of Georgia and States adjacent thereto, within the year last past, organized under the laws of the State of Delaware two corporations, viz., the Merchants Cooperative Association and the American Purchasing Co., for the purpose of purchasing in wholesale quantities through the instrumentality of said corporations all hardware and supplies dealt in by such retail dealers. The stock of such corporation was to be subscribed by said retail dealers and the profits arising from the business of such corporations were to be distributed to its stockholders as dividends. That at the outset said corporations undertook to purchase supplies for their stockholders from the W. A. Ray Hardware Co., of Pensacola, Fla., upon an arrangement made with that company that it should have for the service thus performed compensation aggregating 5 per cent of the cost price of all supplies so procured.

PAR. 3. That the respondents have conspired and confederated together with themselves and with other persons and particularly with other members of said respondent, the Southern Hardware Jobbers Association, to prevent the said Merchants Cooperative Association and American Purchasing Co. from obtaining from manufacturers and other usual sources from which purchasers of hardware in wholesale quantities must obtain supplies, either directly or through the assistance of the said W. A. Ray Hardware Co. and said respondents have, by boycott and threats of boycott and other unlawful means induced manufacturers and others to refuse to sell their products to said Merchants Cooperative Association and the American Purchasing Co., and such manufacturers and their brokers were informed by respondents that if they sold their products to said Merchants Cooperative Association and the American Purchasing Co. that the members of said Southern Hardware Jobbers' Association would not thereafter purchase any of the products of such manufacturers, and by means thereof manufacturers of hardware generally were intimidated to the extent that they thereafter refused to sell their products to said Merchants Cooperative Association and the American Purchasing Co. That the machinery of said Southern Hardware Jobbers' Association was employed by its

officers and members in bringing about and making effective the boycott as herein set out.

PAR. 4. That the use by each and all of said respondents, severally and in their common interest, of the above-mentioned practices, is an unfair method of competition in commerce within the meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., The Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King, and John Donnan, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearance by their respective attorneys, and filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents before an examiner of the Federal Trade Commission, theretofore duly appointed.

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

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Southern Hardware Jobbers' Association, is now, and for more than two years last past continuously has been, a voluntary, unincorporated association, with its principal office and place of business located in the City of Richmond, State of Virginia; that the territory within which its members sell and distribute their merchandise is that portion of the United States bounded by the Potomac River on the north, the Rio Grande on the south, the Atlantic Ocean on the east, and the Western Boundary of Oklahoma on the west; that the members of the Respondent Association have over 1,100 salesmen traveling the hardware trade throughout the said territory; that the number of the Association members is about 150; that the annual business of the

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members of this Association in said territory amounts to between three hundred and five hundred million dollars; that the membership of the said Association comprised, at the time of the issuance and filing of the complaint herein, and now comprises, about 90 per cent of all those doing a jobbing or a wholesale business in hardware in said territory; and that each and all of these members are engaged in distributing and selling, at wholesale, hardware and its allied commodities in interstate commerce in said territory to retail dealers in hardware and said commodities, in direct competition with other persons, firms and corporations similarly engaged in said territory.

PAR. 2. That about 90 per cent of the members of the said Southern Hardware Jobbers' Association were at all times mentioned in the complaint, and now are, engaged in the sale of hardware at retail as well as at wholesale; that these members of the said Association which do a retail business as well as a wholesale business were also, at all of the said times, so far as their retail business was concerned, competitors of all exclusively retail dealers in hardware in said territory, including their own customers.

PAR. 3. That the size and importance of some of the representative members of the Southern Hardware Jobbers' Association are shown by the following facts:

The Beck & Gregg Hardware Co. in their fiscal year of 1918-19 did a \$3,600,000 business; in the fiscal year of 1919 to 1920 it did between \$4,000,000 and \$5,000,000. It also does a large retail business. The Geo. E. King Hardware Co. during its fiscal year 1918 to 1919 did a business of \$2,225,000 and during its fiscal year 1919-20 a business of \$3,000,000. It has six large retail stores. The amount of business done annually by the Odell Hardware Co., another member of said Southern Hardware Jobbers' Association, amounted during its fiscal year of 1918-19 to \$2,250,000, during its fiscal year of 1919-20 to \$2,500,000, and during the first half of the fiscal year of 1920-21 to about \$1,000,000.

PAR. 4. That the members of the said Southern Hardware Jobbers' Association were, at the time of the issuance and filing of the complaint herein, so numerous that all of the said members of said Association could not, at that time, without manifest inconvenience and oppressive delay, be made parties respondent therein, but respondents, the Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., The Crumley-Sharp Hardware Co. and The King Hardware Co., were, at said time, and ever since have been, each and all of them, fairly representative of the entire membership of said Association; that all of these companies are corporations and members of the respondent, The Southern Hardware Jobbers' Association.

tion, and are now and were, and each and all of the members of the said association are now and were, at all the times mentioned in the complaint and prior to the filing thereof, engaged in buying and selling hardware in interstate commerce in wholesale quantities in the City of Atlanta, State of Georgia, and throughout adjoining States and the said respondents in the course of their business purchase goods, wares, and merchandise in the various States of the United States and transport the same to their respective places of business in the City of Atlanta, State of Georgia, where they are resold at wholesale, and at times at retail and shipped throughout said State and into States adjacent thereto; and that there is continuously, and has been at all times mentioned in the complaint herein, a constant current of trade and commerce in the goods and commodities so purchased by the respondents throughout the States and Territories of the United States.

PAR. 5. That the by-laws of the Southern Hardware Jobbers' Association provide in Article 3 on membership that:

SECTION 1. The members of the Association shall be composed of wholesale hardware firms and doing business in the Southern States.

SEC. 2. Any firm or corporation, located in a recognized jobbing center, whose business is the selling of hardware at wholesale, exclusive of machinery, implements, and mill supplies, and whose sales to merchants shall not be less than 75 per cent of their gross sales of \$250,000 per annum, and who have not less than three salesmen constantly on the road, and whose capital, or capital and surplus, is not less than \$75,000, upon application to the Secretary in writing, and a four-fifths vote of the Executive Committee, may become a member of this Association upon subscribing to the Constitution and By-Laws and payment of \$25 membership fee in advance, and agreeing to pay annual dues of \$75 within 30 days after each annual meeting.

The membership of the said Association is further restricted to those wholesalers whose policy it is to distribute their goods and merchandise through the so-called regular channels of trade, that is, from manufacturer to jobber, from jobber to retailer, and from retailer to consumer.

PAR. 6. That the purpose and intent of the respondent Association and of its members is to dominate the wholesale and jobbing trade in hardware and allied commodities in the Southern States and to enjoin upon such trade the methods which respondent association and its members approve and to hinder the competition in such trade arising from the operations of those who hold divergent views as to business methods; that the members of respondent Association refuse to purchase from manufacturers who sell to customers who are not members of respondent Association and that attitude is made known by them to all manufacturers selling hardware and allied commodi-

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ties into said territory; that for the accomplishment of its purpose in maintaining in said territory the business methods approved by it, respondent Association conducts a system of espionage upon the business of the wholesale and jobbing trade in said territory, both as to its members and nonmembers; that in many instances members of the respondent Association and the respondent Association through its officers have communicated to manufacturers found to be selling to nonmember customers that such transactions were known to the respondent Association and its members and disapproved by them, the imputation being that such manufacturers must choose between sales to members of respondent association and sales to nonmembers.

PAR. 7. The respondent, George E. King, was the President, and John Donnan was the secretary-treasurer of the respondent, the Southern Hardware Jobbers' Association, at all of the times mentioned in the complaint. The powers of the Secretary at all these times were great. In him, as secretary, were largely centered the activities of the Association. In the line of his duties the secretary attended its annual and its executive committee meetings, and many of its district and local gatherings. He kept, however, meager minutes of the business transacted at these meetings, and any record of the same was generally made after the meeting was over and was not submitted to the association for its approval. The Secretary was at all times active in protecting the interests of the members as they are defined in the by-laws of the respondent association.

PAR. 8. It was at all times the duty of the secretary-treasurer of the said association to make up the lists of its members, to pass upon the qualifications of applicants for membership therein, and if any such applicant failed to meet the secretary's approval, to deny membership to it without further consideration by the membership committee of the association, or to add to the list of members those that in his estimation as secretary were so-called regular jobbers. It was also his duty as said secretary to collect the dues of its members and the other items of its income. These all amount to about \$15,000 annually, and out of this he was paid by the association for his work as its secretary and treasurer, a yearly salary. It was his further duty as secretary to keep in close touch with the members and the secretary of the American Hardware Manufacturers' Association and to notify that secretary of any persons, firms, or corporations not considered by him to be legitimate jobbers and ineligible to membership in his said Association, who sought to purchase hardware and hardware supplies from members of the American Hardware Manufacturers' Association on the same terms and conditions as are gen-

erally enjoyed by the members of the Southern Hardware Jobbers' Association.

PAR. 9. That the lists mentioned above of the members of the respondent, the Southern Hardware Jobbers' Association, were at all times, by the respondent, John Donnan, as secretary of and for the respondent, the Southern Hardware Jobbers' Association, distributed to and among hardware producers and manufacturers, including particularly the members of the American Hardware Manufacturers' Association, to give the said manufacturers and producers of hardware the names of those persons, firms, and corporations who in the estimation of the respondent, the Southern Hardware Jobbers' Association, its officers, directors and members, were justly entitled to purchase hardware on the so-called legitimate jobbers' terms and conditions from the said manufacturers and producers of hardware.

PAR. 10. That for the objects and purposes recited above such lists, with the desire and consent of the said respondent, the Southern Hardware Jobbers' Association, its officers, directors, and members, were published in the Hardware Age Directory and also in the Hardware Jobbers' Directory; that these two hardware directories circulate freely among, and are designed to give to manufacturers of hardware and hardware supplies, and particularly to the members of the American Hardware Manufacturers' Association, and are by such manufacturers used to obtain the names of those jobbers who, in the estimation of the Southern Hardware Jobbers' Association, are justly entitled to purchase hardware and hardware supplies on the same terms and conditions as are usually accorded by said manufacturers to the so-called legitimate jobbers.

PAR. 11. That there has been continuously, and for some years immediately prior to the issuance of the complaint herein, and there is existing now in the United States, an association of hardware manufacturers known as the American Hardware Manufacturers' Association. That this association comprises about 530 to 540 members, including the principal manufacturers of hardware in this country. Representative members of this Association were the Kelly Axe Co., which dominated the axe business in the United States; the Continental Co. of Detroit, Mich., which controlled about 90 per cent of the screen door and window trade in America; and the American Fork and Hoe Co., the largest fork and hoe manufacturer in the United States. As a rule the members of this Association in deference to the expressed desires and wishes of the respondents and members of the Southern Hardware Jobbers' Association practiced the distribution of their fabricated articles from manufacturer to jobber, and from jobber to retailer, and from retailer to consumer.

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In some few instances, and in exceptional cases, its members did sell hardware direct to the retail trade, but never on the same terms and conditions that it sold like goods and quantities to the so-called legitimate jobbers, including the members of the Southern Hardware Jobbers' Association. In the case of all such sales direct to the retail trade the members of the American Hardware Manufacturers' Association protected the jobber in his method of distribution by charging the retail buyers price differentials. This practice insured that the manufacturer charged the retailer just as much for the goods as if the retailer bought them from the jobber. The same was true in cases where the manufacturer sold his goods to a so-called irregular or illegitimate jobber. No objection was made by the regular jobber to such occasional sales by manufacturers to the retailer or illegitimate jobber provided the price differential was charged by them. In the territory covered by the Southern Hardware Jobbers' Association there were many consumers and retailers whose requirements were sufficiently large to make it practicable and profitable for manufacturers to sell direct to them, and on the same terms and conditions as they sell to the members of the Southern Hardware Jobbers' Association.

PAR. 12. That the members of this American Hardware Manufacturers' Association maintained at all times very close relations with the members of the Southern Hardware Jobbers' Association. The members of each met together at the annual, district, and local meetings of the Southern Hardware Jobbers' Association: To illustrate, the executive committee of the Southern Hardware Jobbers' Association met in January of each year together with the executive committee of the American Hardware Manufacturers' Association to discuss business conditions and to arrange for the annual conventions of the Southern Hardware Jobbers' Association and the American Hardware Manufacturers' Association at the same time and place. In May of each year, these annual conventions took place jointly in some principal city in the East or South, and the members of the respective associations met together and discussed and considered mutual business interests. Furthermore the territory of the Southern Hardware Jobbers' Association was divided up by the Association into eight so-called districts or zones. Those members of the Association located in these zones were accustomed to hold district meetings therein from time to time. Members of the American Hardware Manufacturers' Association attended these district meetings and took part in them: Thereat prices of hardware commodities were discussed and arranged, especially when the prices of mail order houses, and others not observing the so-

called regular and legitimate channels of distribution, came into competition with the resale prices charged by the members of the said Southern Hardware Jobbers' Association.

PAR. 13. That the open and avowed policy of the Southern Hardware Jobbers' Association of admitting to membership therein, no person, firm, or corporation which did not observe the policy of purchasing, selling and distributing commodities through the so-called regular channels of trade was made known to manufacturers comprising the American Hardware Manufacturers' Association. This Association, as stated above, included in its membership a large majority of the hardware manufacturers of the United States selling and distributing commodities in the territory covered by the Southern Hardware Jobbers' Association.

PAR. 14. That certain retailers of hardware to the number of about 300 in the State of Georgia and in adjoining states organized in July, 1919, under the laws of the State of Delaware, two corporations, one under the name of the American Purchasing Company, and the other under the name of the Merchants Cooperative Association. The object of the Purchasing Company was to act as purchasing agent for the Merchants Cooperative Association and to operate a regular wholesale house for the distribution of such merchandise as could not well be handled by direct shipment from manufacturers. The objects of Merchants' Cooperative Association were to deal directly with the manufacturer and secure the benefits of direct purchase on the same terms as any jobber or wholesaler, and by the saving resulting from this method enable the usual hardware retailer to compete successfully with mail order and catalog houses and with the retailing of hardware by the so-called regular jobbers.

PAR. 15. That one of the said corporations, namely, the American Purchasing Co., was organized and designed to meet the essential requirements for membership in the Southern Hardware Jobbers' Association, including the requirements set out in the Association's by-laws; that after its organization the said American Purchasing Co., through its officers, sought membership in the said Southern Hardware Jobbers' Association by applying in the customary manner to its secretary, John Donnan, to its president, George E. King, president of the King Hardware Co., and to other members of the said Association located in Atlanta, Ga., namely, the Dinkins-Davidson Hardware Co., the Crumley-Sharp Hardware Co.; that the American Purchasing Co. was informed that its selling policy did not meet with the approval of nor the requirements for membership

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in the Southern Hardware Jobbers' Association, and that the company could not become a member thereof.

PAR. 16. That the American Purchasing Co. sometime after its organization and after its first president resigned, offered the office of president to W. A. Ray, of the W. A. Ray Hardware Co., of Pensacola, Fla., a company which was at that time a member in good standing of the Southern Hardware Jobbers' Association; that the said W. A. Ray was fearful that if he accepted this office as president of the said Purchasing Co. he would incur the displeasure of his business associates and members of the Southern Hardware Jobbers' Association and would jeopardize the business of his company, the W. A. Ray Hardware Co., and he thereupon, and before making any acceptance of this office, went to Atlanta, Ga., to George E. King, president of the Southern Hardware Jobbers' Association and of the respondent, the King Hardware Co., and to other members of the said association located in Atlanta, Ga., to secure its assurance that his acceptance of the office would be followed by no business troubles, either to him, the Purchasing Co., nor to the W. A. Ray Hardware Co.; that upon his arrival at Atlanta he stated his mission to George E. King, as president of the Southern Hardware Jobbers' Association, who informed him that he (King) alone could not decide the matter and that he (King) would have to call a district meeting and let the members at that meeting, together with the secretary of the Southern Hardware Jobbers' Association, decide the matter; that thereupon George E. King called a district meeting and invited the secretary of the Southern Hardware Jobbers' Association to be present; that this meeting was accordingly held and W. A. Ray was informed by the said George E. King and the other Atlanta jobbers at this district meeting that in case he assumed the presidency of the said American Purchasing Co., which had been offered to him and the acceptance of which he had under consideration, he would be expected to resign his membership in the Southern Hardware Jobbers' Association. Mr. Ray was further notified that his hardware business in Pensacola, Fla., would suffer pecuniary loss by reason of his activities in behalf of the said American Purchasing Co.; that as a result of this conference at Atlanta, Mr. Ray notified the American Purchasing Co. that he could not accept the presidency of that company.

PAR. 17. That immediately upon the organization of the American Purchasing Co. and the Merchants' Cooperative Association, both of them began to purchase goods from hardware and other manufacturers upon the terms and conditions usually accorded by such manufacturers to the so-called regular jobbers. That soon after the

American Purchasing Co. and the Merchants' Cooperative Association began to purchase hardware and hardware supplies from manufacturers, and especially from those manufacturers who were members of the American Hardware Manufacturers' Association, on the same terms and conditions that were accorded by said manufacturers to the so-called regular jobbers, and especially to the members of the Southern Hardware Jobbers' Association, the president, George E. King, as president, and the secretary, John Donnan, as secretary, and other members of the said Southern Hardware Jobbers' Association, learned of such purchases and began to interfere with and to prevent such purchases. They notified the American Hardware Manufacturers' Association, its officers, and members, and other manufacturers, of the character and purposes of the said American Purchasing Co. and the Merchants' Cooperative Association. They declared to them that the purpose and the effect of the competition of the two last-mentioned corporations would, by reason of their policy of distribution, eliminate in part at least the services of the jobber in hardware. They informed the said American Hardware Manufacturers' Association and its members and other manufacturers of hardware that the said American Purchasing Co. and the Merchants' Cooperative Association were neither of them members of the Southern Hardware Jobbers' Association. They notified the American Hardware Manufacturers' Association, its officers and its members and other manufacturers that if any manufacturers of hardware sold their goods to either the American Purchasing Co. or the Merchants' Cooperative Association on the same basis accorded by manufacturers of hardware to the so-called regular jobber, especially to members of the Southern Hardware Jobbers' Association, that the respondents and those members would look upon such sales as acts unfriendly to the Southern Hardware Jobbers' Association and its members and would afford a reason for such members to refuse to deal any longer with such manufacturers. That the said notification to the American Hardware Manufacturers' Association and to other manufacturers of hardware served as a warning to all manufacturers not to trade or deal with the American Purchasing Co. or with the Merchants' Cooperative Association on pain of losing the trade and patronage of the Southern Hardware Jobbers' Association members.

PAR. 18. That after and as a result of receiving the notification aforesaid from the Southern Hardware Jobbers' Association and members thereof, concerning the said American Purchasing Co. and the Merchants Cooperative Association, a large number of hardware manufacturers, members of the American Hardware Manufacturers'

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Association, refused to complete orders for hardware supplies which many of them had theretofore accepted from these companies and partially filled, and returned the same unfilled. As a further result of said notification and threat of boycott, great difficulty was also experienced by these companies in getting other manufacturers, members of the American Association, to complete their orders. As a further result of said threat to boycott, other manufacturers, members of said Association, refused to deal with said American Purchasing Co. and the Merchants' Cooperative Association outright, notwithstanding said companies offered to purchase their supplies in carload lots and otherwise to conform to all the requirements of the said members of the American Hardware Manufacturers' Association with regard to purchases from them by the so-called regular jobbers, members of said Jobbers' Association.

PAR. 19. That by reason of all these said notices and interferences the American Purchasing Co. and the Merchants' Cooperative Association were no longer able to buy many of the goods they desired and were compelled to resort to the ruse and deceptive device of getting some regular jobber to purchase goods ostensibly for himself but in reality for either the American Purchasing Co. or the Merchants' Cooperative Association or both. That arrangements were then made by the American Purchasing Co. with the said W. A. Ray Hardware Co. by which the hardware company agreed to purchase hardware and supplies for the Merchants' Cooperative Association, and distribute the same to its stockholders, on a basis of 5 per cent commission on the cost price of all hardware and supplies so purchased by the W. A. Ray Hardware Co. That the said W. A. Ray Hardware Co., under the purchasing arrangement made with the American Purchasing Co., contracted for the purchase of large quantities of hardware and other supplies from manufacturers of the same and particularly from members of the American Hardware Manufacturers' Association and distributed the same to the Merchants' Cooperative Association and its stockholders. That all such purchases and sales were made in the various States of the Union and in direct competition with the respondents and members of the Southern Hardware Jobbers' Association and with other persons, firms, and corporations similarly engaged.

PAR. 20. That at first Mr. Ray and his company, the W. A. Ray Hardware Co., were able to purchase and did purchase large quantities of goods for the American Purchasing Co. and the Merchants' Cooperative Association from manufacturers of hardware and especially from members of the American Hardware Manufacturers' Association. But that afterwards and by reason of said activities and

the said notices of the president and secretary as such of the Southern Hardware Jobbers' Association and its members to manufacturers of hardware and especially to the American Hardware Manufacturers' Association and its members, the said manufacturers refused any longer to supply W. A. Ray and the W. A. Ray Hardware Co. with goods for the American Purchasing Co. and the Merchants' Cooperative Association.

PAR. 21. That the respondents, and the members of the Southern Hardware Jobbers' Association, especially through its president, George E. King, and its secretary, John Donnan, as such president and secretary respectively, have endeavored to persuade publishers of hardware trade journals to publish derogatory matters and things which the members of the said association and its president and secretary believe would have, and which they intended to have, the effect of causing manufacturers of hardware to refuse to sell to those intending purchasers whose business methods did not meet with the approval of the respondents, and especially to sell to the American Purchasing Co., and the Merchants' Cooperative Association: That one of these publications was "The Hardware Manufacturer," the official organ of, and a trade journal published by, and in the interest of, the American Hardware Manufacturers' Association and its members; that in answer to repeated requests from the respondent, John Donnan, as secretary of the said Southern Hardware Jobbers' Association, to the said American Hardware Manufacturers' Association, and its secretary as such, to warn its members against selling their fabricated articles to the American Purchasing Co. and the Merchants' Cooperative Association, the said secretary of the American Hardware Manufacturers' Association, as secretary, and with the knowledge and advice of the president of the American Hardware Manufacturers' Association, wrote to John Donnan, as secretary of the said Southern Hardware Jobbers' Association, the following letter of August 4th, 1919:

"I am a little puzzled as to just what it is advisable for me to do in relation to the American Purchasing Co.

"It would never do to give them publicity through the columns of The Hardware Manufacturer, nor by circular letter, besides I might find myself defendant in a suit under the Sherman law as a conspirator with you to injure their trade.

"We would be glad (and I think this the best course at present) to publish in the next issue of The Hardware Manufacturer a reminder to our members that you, as Secretary-Treasurer of the Southern Hardware Jobbers' Association, have accumulated a store of information about the standing and methods of distributors south of the Mason-Dixon line, and that you will gladly supply our manufacturers at any time, on request, with such information as will enable them to establish business connections with the reliable, straight dealing

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Southern Jobbers. Possibly it would be better for you to make this offer in a letter to our manufacturers over your signature and we will give it our approval by printing it in *The Hardware Manufacturer*."

Mr. John Donnan never made such an offer.

PAR. 22. That the respondents, as stated above, conspired and agreed among themselves and with others to induce and coerce members of the American Hardware Manufacturers' Association by means of boycott and threats to boycott, to refuse to deal with, or to sell to, in interstate commerce, the Merchants' Cooperative Association and the American Purchasing Co. upon the same terms and conditions given by the members of the said Manufacturers' Association to the respondents, and thus compelled the American Purchasing Co. and the Merchants' Cooperative Association and their stockholders to purchase as retailers from their competitors, the members of the Southern Hardware Jobbers' Association, and upon the same terms and conditions given by the members of the Association to their retail customers; that the purpose and intent and result of all these activities on the part of the Southern Hardware Jobbers' Association, its officers and members, was unduly to hinder competition in interstate commerce between the members of the respondent Jobbers' Association on the one hand, and the Purchasing Co. and the Cooperative Association on the other, and unduly to hinder the two latter from obtaining hardware and hardware supplies from the said manufacturers thereof, and thereby unduly to hinder competition in the distribution and sale of hardware and allied commodities in interstate commerce.

## CONCLUSION.

That the acts, agreements, understandings, policies and practices of the respondents, and each and all of them, are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respective respondents, 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 respondents have violated the provisions of the Act of Congress, approved September 26, 1914, en-

titled "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, Southern Hardware Jobbers' Association, its officers, committees and members, and Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King, and John Donnan, and each of them, forever cease and desist, from:

1. Combining and conspiring among themselves or with others, directly or indirectly, to induce, persuade or compel and from inducing, persuading or compelling manufactures, importers or producers, their agents or brokers to refuse to sell to the American Purchasing Co. or the Merchants' Cooperative Association because of any plan of organization or method of transacting business adopted by said company.

2. Combining and conspiring among themselves and with others to give and from giving, directly or indirectly, verbal, written or other notices or communications to manufacturers, importers and producers, their agents or brokers, that business concerns not members of the Southern Hardware Jobbers' Association, and not in harmony with the plans and policies of the said Association and not conforming to the tests and standards, set up by the said Association for membership therein are not entitled to purchase and obtain goods, wares and merchandise upon the same terms and conditions usually accorded by said manufacturers, importers and producers to the members of the Southern Hardware Jobbers' Association.

3. Combining or conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct or prevent manufacturers, producers or importers, their brokers or agents, from dealing with the American Purchasing Company or the Merchants' Cooperative Association, or others engaged in similar business, upon as favorable terms and conditions usually accorded by the said manufacturers, producers or importers, to the members of the said Southern Hardware Jobbers' Association.

4. Hindering, obstructing or preventing, directly or indirectly, any manufacturer, producer or importer, or broker or agent thereof, from selling and shipping, either or both, in interstate commerce, to the American Purchasing Co. or to the Merchants' Cooperative Association or to others engaged in similar business.

5. Combining and conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct

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or prevent the American Purchasing Co. or the Merchants' Cooperative Association, or others engaged in similar business, from freely purchasing and obtaining, in interstate commerce, the goods, wares and merchandise, usually handled by the said Company or Association in the course of their business, or from freely competing in interstate commerce with the members of the Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., King Hardware Co., George E. King, or others engaged in similar business.

6. Combining and conspiring, directly or indirectly, among themselves or with others, to establish and to continue maintaining any tests or standards for determining whether said American Purchasing Co. or Merchants' Cooperative Association or others engaged in similar business shall be permitted to purchase goods, wares and merchandise in interstate commerce upon the same terms and conditions as the members of the said Southern Hardware Jobbers' Association.

7. Combining and conspiring, directly or indirectly, among themselves or with others, to publish or to distribute, and from publishing or distributing to manufacturers, importers and producers, their agents or their brokers, engaged in selling goods, wares, and merchandise, especially hardware, among the various states, lists of the members of the Southern Hardware Jobbers' Association for the purpose and with the intent of influencing said manufacturers, importers, producers, their agents and their brokers, to refrain from making sales of such commodities to others than those names in such lists in the territory covered by the said Association.

8. Combining and conspiring among themselves, or with others, to induce, coerce and compel manufacturers, importers and producers, or their agents or their brokers, directly or indirectly, to refuse to sell goods, wares and merchandise to the American Purchasing Co. or to the Merchants' Cooperative Association, either or both, or to others engaged in the same business, upon the same terms and conditions usually offered and given by the said manufacturers, importers and producers, their agents or their brokers, to the members of the Southern Hardware Jobbers' Association.

9. Carrying on between and among themselves, or with others, communications, written or verbal, having the purpose, tendency or the effect of inducing, coercing or compelling manufacturers, importers, or producers, of goods, wares and merchandise, especially hardware, their agents or their brokers, directly or indirectly, to refuse to deal with or to sell to the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in similar business upon the

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same terms and conditions usually accorded by said manufacturers, importers and producers to the members of the Southern Hardware Jobbers' Association.

10. Combining or conspiring among themselves, or with others, to compel, or to attempt to compel, the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in a similar business, to purchase the goods, wares, and merchandise required for their business from or through any competitor of said Purchasing Co. or said Cooperative Association, or from others similarly engaged.

11. Combining or conspiring among themselves or with others to boycott or to threaten to boycott, or to threaten with loss of patronage or custom, any manufacturer, importer or producer, or his agent or broker, engaged in interstate commerce, for selling or agreeing to sell to the American Purchasing Co. or the Merchants' Cooperative Association or others engaged in a similar business, on the same terms and conditions accorded by such manufacturer, importer or producer, or his agent or broker, to members of the Southern Hardware Jobbers' Association.

*It is further ordered,* That the respondents, Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., Crumley-Sharp Hardware Co., King Hardware Co., George E. King, and John Donnan, shall within sixty (60) days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

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FEDERAL TRADE COMMISSION

*v.*

M. G. GIBBS, TRADING UNDER THE NAME AND STYLE OF  
PEOPLES DRUG STORES.