

Complaint.

FEDERAL TRADE COMMISSION

v.

THE SALT PRODUCERS ASSOCIATION ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914; AND SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 781—June 28, 1922.

SYLLABUS.

Where members of an unincorporated association of dealers in, and producers of, salt, with a combined output approximating one-half of the entire output of salt manufactured and sold in the United States, pursuant to a general understanding among the membership, extended the usual jobber's discount only to regular wholesale grocers as listed in certain trade directories, notwithstanding the fact that there were numerous bona fide wholesale dealers in salt who made no claim to being wholesale grocers and who consequently were not listed in such trade directories; with the result that many of such dealers were thereafter unable to purchase with the usual jobber's discount:

Held, That such practices, under the circumstances set forth, constituted an unfair method of competition in violation of Section 5 of the act of Congress approved September 26, 1914, and also an unlawful discrimination in price, in violation of the provisions of Section 2 of the act of Congress approved October 15, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that The Salt Producers' Association, Michigan Salt Association, Michigan Salt Works, International Salt Company of New York, Worcester Salt Company, The Colonial Salt Company, Morton Salt Company, Ohio Salt Company, Mulkey Salt Company, Inland-Delray Salt Company, Diamond Crystal Salt Company, Stearnes Salt & Lumber Company, The Buckley & Douglas Lumber Company, Cutler Magner Company, Union Salt Company, Carey Salt Company, Barton Salt Company, Anthony Salt Company and D. B. Doremus, hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce, as hereinafter more particularly set forth, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and that said respondents have been and are discriminating in price while engaged in interstate commerce, between the purchasers of its commodities, as hereinafter more par-

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ticularly set forth, in violation of the provisions of Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint stating its charges on information and belief, as follows:

PARAGRAPH 1. That the respondent, The Salt Producers' Association, is a voluntary organization formed in the year 1914, with a membership composed of persons, partnerships and corporations engaged in the production and sale of salt; that 18 out of the 35 salt producers of the United States are members of said respondent Association; that the said members of said respondent Association produce and sell annually approximately 2,000,000 tons of salt out of the approximate total of 2,350,000 tons produced and sold annually in the United States, or nearly 90 per cent of the total production of salt in the United States; that respondent D. B. Doremus is the secretary of said respondent Association and is in active charge of its affairs; that the members of said respondent Association are the following named respondents, to wit:

Michigan Salt Association, Saginaw, Mich.;
Michigan Salt Works, Marine City, Mich.;
International Salt Company of New York, Scranton, Pa.;
Worcester Salt Company, 71 Murray Street, New York City;
The Colonial Salt Company, Akron, Ohio;
Morton Salt Company, 717 Railway Exchange Building,
Chicago, Ill.;
Ohio Salt Company, Wadsworth, Ohio;
Mulkey Salt Company, Dix and River Rouge, Detroit, Mich.;
Inland-Delray Salt Company, 418 Murphy Building, Detroit,
Mich.;
Diamond Crystal Salt Company, St. Clair, Mich.;
Stearnes Salt & Lumber Company, Ludington, Mich.;
The Buckley & Douglas Lumber Company, Manistee, Mich.;
Cutler Magner Company, Duluth, Minn.;
Barton Salt Company, Hutchinson, Kans.;
Union Salt Company, Addison, Lake Shore & Michigan
Southern Railway, Cleveland, Ohio;
Carey Salt Company, Hutchinson, Kans.;
Anthony Salt Company, Anthony, Kans.

PAR. 2. That in the course of the business conducted by the said respondent members of said respondent, The Salt Producers' Association, as aforesaid, they transport their said product from the States in which the same is produced, to the purchasers thereof in other States and in the Territories of the United States and in the

District of Columbia, and in foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That for more than seven years last past, the respondent, Morton Salt Company, has been and now is the largest salt producer in the United States; that said respondent has, during said period, issued and now issues, from time to time, its quotations covering the prices fixed by it for the sale of its salt, which quotations have been and are, as issued, sent to all of the other members of said respondent Association, who thereupon immediately adopt and publish, in substantial conformity therewith, their own quotations covering the prices fixed by them for their salt; that because of the practice of all the respondent salt producers in fixing and maintaining prices in substantial conformity with the prices contained in said respondent's quotations, as aforesaid, which practice is hereinafter referred to for convenience as the "salt producers' price practice," purchasers of salt have been during all of said period and now are unable to secure said product from any respondent manufacturer thereof at prices substantially different from those contained in the said quotations issued from time to time by said respondent, Morton Salt Company, as aforesaid.

PAR. 4. That in order to effectually control the retail market price on the salt produced by the said respondent members of said respondent, The Salt Producers Association, and to consequently strengthen the policy of said respondent members to maintain uniform prices for their product through the said salt producers' price practice, the said respondent Association, in October, 1914, shortly after its organization, held a meeting of its said respondent members and at said meeting the said respondent members conspired, confederated and agreed together and among themselves to discontinue what they had been doing for 20 years or more, namely, selling their said product without discrimination in price between the different purchasers thereof, such purchasers including wholesale dealers in salt exclusively, and wholesale dealers in salt in conjunction with other commodities; that said respondent members thereupon conspired, confederated and agreed together and among themselves to discontinue granting the discount, amounting to from 7 per cent to 15 per cent of the selling price of the various grades of salt, to all those to whom they had theretofore granted such discount, except in the case of such customers as were listed and designated as wholesale grocers in a directory known as "The Red Book," published at Columbus, Ohio, by one O. C. Ingalls; that in the month of January, 1917, said respondent members, at an Association meeting, further conspired, confederated and agreed together to grant such discount only to those listed and designated as wholesale grocers in

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a directory published by the Thomas Publishing Co. of New York City; that neither of said directories contained or contains a complete list of all of the wholesale groceries in the various localities of the United States supplied by said respondents with their said product.

PAR. 5. That pursuant to the said conspiracy of October, 1914, said respondent members thereafter refused to allow a large number of their former customers the discounts which they had been theretofore allowed when purchasing said product, but made such customers and all other wholesale dealers whose names were not contained in said Red Book, pay, and they did pay, the full list price therefor, without any discount therefrom, and said respondent members allowed such discount to those persons, partnerships and corporations listed in said Red Book up to the month of January, 1917; that said respondent members were, after said agreement was put into effect in October, 1914, able to and did, through its customers listed in said Red Book, uniformly maintain their own dictated prices at which their product was resold to the public by their said customers; that pursuant to the said conspiracy of January, 1917, the said respondent members continued to refuse and still refuse to allow a large number of their former customers the discount which had theretofore been allowed them, and have since said time refused and still refuse to allow such discount to any persons, partnerships or corporations, including wholesale grocers and other wholesale dealers in salt except those listed and designated as wholesale grocers in said directory published by the said Thomas Publishing Co.; that said respondent members compel all of their customers, including wholesale grocers and other wholesale dealers in salt and other commodities, not listed in said last named directory, to pay, and they do pay, the full list price for said product without any discount therefrom, while respondents' customers listed in said last named directory, as aforesaid, are granted and receive the said discount from the full list price of said product; that said respondent members have been and now are enabled, through the restricted number of their customers in whose favor they have been and now are discriminating as aforesaid, to uniformly maintain their own dictated prices at which their product has been and is resold to the retail trade by their said customers listed in said last named directory.

PAR. 6. That the said discriminations in price made by said respondents, as hereinabove stated, between the various purchasers

of their said product, in the course of their interstate business as aforesaid, were not and are not made on account of any differences whatever in the grade, quality or quantity of the product so sold, nor were nor are such discriminations in price such as make only due allowance, or any allowance whatever for difference in the cost of selling or transportation of such product, nor were or are such discriminations in price made in good faith in the same or different communities to meet competition.

PAR. 7. That the effects, among others of said unfair and unlawful discriminations in price made by said respondents, as the result of said conspiracy, between the different purchasers of their said products as aforesaid, in the conduct of their said interstate business, are:

(1) To give to those wholesale grocers listed in said Thomas Publishing Co.'s directory which are granted said discount, an unfair and unlawful advantage over all other wholesale grocers and wholesale dealers in salt who are refused the said discount. The result may be to substantially lessen competition and tend to create a monopoly for those listed in said directory, in the business of selling salt at wholesale in interstate commerce, as aforesaid.

(2) To enable said respondent members of said respondent, The Salt Producers' Association, to effectually maintain among themselves uniform selling prices for their said product. The result necessarily may be to substantially lessen competition among those engaged in the business of producing salt and selling the same in interstate commerce in the various localities of the United States.

PAR. 12. That by reason of the facts hereinabove stated, the respondents (1) have been and are using an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and (2) have been and are discriminating in price between the different purchasers of their products, in violation of the provisions of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an Act of Congress approved October 15, 1914, entitled, "An Act

Findings.

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To supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents above named, charging such respondents and each of them with the use of unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act of September 26, 1914, and further charging that said respondents and each of them had been and were discriminating in price between different purchasers of salt produced or sold by them, in violation of said Act of October 15, 1914.

Each of the respondents entered appearance and filed answer herein, admitting that certain of the matters and things alleged in said complaint are true in manner and form as therein set forth, and denying certain other allegations contained therein, and the complaint herein having been dismissed as to the respondent, The Buckley & Douglas Lumber Company,¹ the other respondents made and entered into and filed herein a stipulation as to the facts, in which it is agreed that the statement of facts contained in such stipulation contains the relevant, material facts of this proceeding, and may be taken as such by the Federal Trade Commission in lieu of testimony, and that said Commission may proceed forthwith on such stipulation to make its findings and such order as it may deem proper to enter herein, without the introduction of testimony, oral argument or the filing of briefs:

And thereupon the proceeding came on for final hearing and the Commission, having considered the complaint herein, the answers thereto and the stipulation as to the facts, and being fully advised in the premises, makes this its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Salt Producers Association, is a voluntary association formed in the year 1914, with a membership composed of producers and dealers in salt, which producing members, since the year 1914, have produced about one-half of the entire output of salt manufactured and sold in the United States; that the respondent, D. B. Doremus, is the secretary of said respondent, The Salt Producers Association, and is in active charge of its business and affairs.

PAR. 2. That the respondents, Diamond Crystal Salt Co., Michigan Salt Works, Mulkey Salt Co., and Stearnes Salt & Lumber Co., are corporations, each organized under the laws of the State of Michi-

¹ By order entered of even date, no reasons assigned.

gan; that the respondents, Anthony Salt Co., Barton Salt Co. and Carey Salt Co., are corporations, each organized under the laws of the State of Kansas; that the respondents, The Colonial Salt Co., Ohio Salt Co. and Union Salt Co., are corporations, each organized under the laws of the State of Ohio; that the respondents, Worcester Salt Co. and International Salt Co. of New York, are corporations, each organized under the laws of the State of New York; that the respondent, Morton Salt Co., is a corporation organized under the laws of the State of Illinois; that the Inland-Delray Salt Co., is a corporation organized under the laws of the State of Utah; that the respondent, Michigan Salt Association, is a partnership composed of Clarence M. Ireton and Arthur A. White, with principal place of business at Saginaw, Mich.

PAR. 3. That each of the respondents named and described in Paragraph 2 hereof is a member of the respondent, The Salt Producers Association, named and described in Paragraph 1 hereof, and each of said respondents manufactures and sells salt or sells salt manufactured by others, and causes salt manufactured or sold by it to be transported to the purchasers thereof from the State where produced, through and into other States of the United States, and in some instances, into foreign countries, in due course of commerce among the States of the United States and with foreign countries, and each of said respondents carries on its respective business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 4. That shortly after the organization of the respondent, The Salt Producers Association, it was the general understanding among its members that thereafter the members of the Association would allow the usual jobber's discount on salt sold by each of them only to regular wholesale grocers, and that the directory known as the Red Book, published at Columbus, Ohio, by one O. C. Ingalls, furnishing the most reliable list of wholesale grocers, should be adopted as the official list of the Association.

That theretofore said members, for more than 20 years, had individually been allowing such jobber's discount to wholesale dealers in salt exclusively and to wholesale dealers in salt in conjunction with commodities other than groceries, and there were numerous bona fide wholesale dealers who sold salt, but who made no claim to being wholesale grocers and as a consequence their names were not listed in said Red Book or in any other directory as wholesale grocers; as a result of said understanding by said Association members, many

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dealers were thereafter unable to purchase salt from such members with the usual jobber's discount.

That thereafter at a meeting of the Association held on January 11, 1917, the following action was taken by the Association: Discussion disclosed that the Red Book as a guide to wholesale grocers was not very dependable, and motion by Mr. Storm that Thomas's Guide of Wholesale Grocers be adopted as official for the Association was seconded by Mr. King and carried.

PAR. 5. That at least since January 1, 1919, the members of the Association have not confined the usual jobber's discount on salt sold by each of them, in all instances to wholesale grocers and dealers whose names were listed in Thomas's Directory, but have allowed such jobber's discount to many wholesale grocers and dealers who were, in the opinion of each individual member, entitled to be classified as a wholesale dealer.

PAR. 6. That the respondent, International Salt Company, has never granted discounts only to those listed and designated as wholesale grocers, in the Red Book or Thomas's Guide of Wholesale Grocers, and it has never used either of said directories in making any of its sales.

CONCLUSION.

That the practices of the respondents and each of them, under the conditions and circumstances set out in the foregoing findings as to the facts, constituted an unfair method of competition in commerce 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"; and further constituted a discrimination in price between different purchasers of salt produced or sold by respondents, in violation 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 CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts wherein and whereby it was agreed by each and all of said respondents, except The Buckley & Douglas Lumber Company, the complaint being dismissed as to such respondent, that said stipulation as to facts should be taken by the Commission in lieu of testimony herein and that the Commission might forthwith proceed upon such stipulation, to enter its report

and findings as to the facts and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report, containing its findings as to the facts and its conclusion that respondents have violated Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that respondents have violated Section 2 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," which said report is hereby referred to and made a part hereof;

Now, therefore, it is ordered, That the respondents The Salt Producers Association, Michigan Salt Association, Michigan Salt Works, International Salt Company of New York, Worcester Salt Company, The Colonial Salt Company, Morton Salt Company, Ohio Salt Company, Mulkey Salt Company, Inland-Delray Salt Company, Diamond Crystal Salt Company, Stearnes Salt & Lumber Company, Cutler Magner Company, Union Salt Company, Carey Salt Company, Barton Salt Company, Anthony Salt Company and D. B. Doremus, and each and all of said respondents, and their respective officers, directors, committees, agents, employees, and all persons acting under or through them or in their behalf, forever cease and desist from directly or indirectly:

1. Entering or attempting to enter into any agreement or understanding together or with one another that any list of jobbers, wholesalers or other dealers in salt, shall determine the persons, partnerships, corporations or associations which the respondents or any of them shall or shall not recognize for the purpose of allowing or withholding jobbers' or wholesalers' prices and terms, or shall or shall not sell at jobbers' or wholesalers' prices and terms.

2. Entering or attempting to enter into any agreement or understanding together or with one another, to limit or restrict the number of persons, partnerships, corporations or associations to whom the respondents or any of them shall sell at jobbers' or wholesalers' prices and terms or recognize for the purpose of allowing jobbers' or wholesalers' prices and terms.

3. Entering or attempting to enter into any agreement or understanding not to sell salt at wholesalers' or jobbers' prices to any person, partnership, corporation or association which is not classified or listed as a wholesaler or jobber by the "Thomas Publishing Company," of New York City, or by any other agency, publisher, or person.

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4. Nothing herein contained shall apply to transactions wholly in intrastate commerce, nor shall this order be construed to enjoin or restrain any respondent herein from discriminating in price between different purchasers of salt on account of differences in the grade, quality or quantity of said commodity, or making due allowance for difference in the cost of selling or transportation, or making any price for salt to meet or to compete with prices previously made by any other respondent, or any other competitor, or from selecting one's own customers in bona fide transactions and not in restraint of trade, or in any respect to enjoin or restrain fair, free and open competition.

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