

Complaint.

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## FEDERAL TRADE COMMISSION

v.

EDWARD FROHLICH, TRADING UNDER THE NAME AND  
STYLE OF FROHLICH GLASS CO., AND E. A. BENEDICT.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION  
5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 975—September 7, 1923.

## SYLLABUS

Where an individual engaged in the manufacture and sale of paints, and a dealer agent of said individual, sold to retailers dealing in so-called Army and Navy (government surplus) goods and other merchandise, paints in containers labeled "U. S. Quality Paint," without the name of the manufacturer, and so advertised the same, although such paint was neither used by nor made for the government nor in accordance with any government specifications, requirements, or formula; with a tendency and capacity to mislead the purchasing public into believing said paint to be a high grade paint made for the Government and in accordance and complying with its specifications and requirements, and with the effect of enabling its retail dealer customers so to advertise and sell the same:

*Held*, That such misbranding, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

## COMPLAINT.

Acting in the public interest 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," the Federal Trade Commission charges that Edward Frohlich, trading under the name and style of Frohlich Glass Company, and E. A. Benedict, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward Frohlich carries on his business in Detroit, Michigan, under the name and style of Frohlich Glass Company and is engaged in the manufacture and sale of paints, oils and similar products to the trade and consuming public, and causes a substantial portion of such products to be transported from the State of Michigan to purchasers thereof in other states and territories of the United States; and is in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent E. A. Benedict, residing at Cleveland, Ohio, is engaged in the business of selling paints, oils, and similar products on commission for various manufacturers, including the respondent Frohlich, and causes said products to be delivered to retail dealers and consumers purchasing the same and residing in states other than the state in which the same are manufactured, and is in direct active competition with other individuals, partnerships and corporations similarly engaged.

PAR. 3. In the course of his said business respondent Benedict originated and devised various misleading and deceptive labels and furnished the same to respondent Frohlich and said respondent Frohlich at said Benedict's request placed said labels upon the containers of house paint manufactured by said Frohlich and delivered the same to customers secured by said Benedict. Among such misleading and deceptive labels was one bearing the words "U. S. Quality" paint and omitting the name of the manufacturer. House paint so labeled was sold and delivered in large quantities by said respondents, acting in concert, both to consumers and to retail dealers in various states, including many dealers engaged or purported to be engaged in selling Government surplus goods, and to concerns doing business under the names "Army Stores", "Army and Navy Stores", "United Surplus Stores" and similar designations.

PAR. 4. In the course of their said businesses said respondents Frohlich and Benedict, cooperating together in the sale of said paint, have falsely represented, advertised, and labeled the same as being "U. S. Quality" paint, and have furnished said retail dealers with cuts and forms for advertising said paint as "U. S. Quality" paint, and many of said dealers have thereby been enabled to and have advertised and sold said paint to the consuming public as "U. S. Quality" paint and have represented the same, in some instances, to have been manufactured for or used by the United States Government; and in other instances said respondent Benedict, with the knowledge of respondent Frohlich, has represented to such dealers that said paint was in fact surplus Government paint; whereas, in fact, said paint was a low grade product and had not been made for nor used by the United States Government and was not Government surplus paint and had not been made according to any Government specifications or requirements.

PAR. 5. The words "U. S. Quality" as used by said respondents in the sale of said paint and on the labels attached to the containers thereof, and in the cuts and forms of advertising furnished by them to

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said retail dealers as described in paragraph 4 hereof, signify to and are understood by a substantial part of the purchasing public to mean a high grade paint manufactured for or used by the United States Government and prepared according to specifications or requirements of said Government and of the quality required by such specifications and requirements, and said labels and advertisements used by respondents, and the representations made by respondent Benedict to said retail dealers as aforesaid are false and have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said paint made and sold by respondents is a high grade paint manufactured for and used by the United States Government, and to induce them to purchase the same in that belief.

PAR. 6. The above alleged acts and things done by the respondents and each of them as aforesaid are all to the prejudice of the public and of respondents' competitors and constitute unfair methods 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 respondents Edward Frohlich, doing business under the name and style of Frohlich Glass Company, and E. A. Benedict, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents entered their appearance and filed their answer herein. Respondent Frohlich, by his attorney of record, S. Homer Ferguson, and respondent Benedict, in person, entered into a stipulation as to the facts with the attorney for the Commission, which stipulation, as executed and filed, provided, among other things, that, subject to the approval of the Commission, the statement of facts therein contained might be taken as the facts of this proceeding and in lieu of testimony before the Commission, and that the Commission might proceed further upon said stipulation and said statement of facts to make its report, state its findings as to the facts and conclusion, and to enter its order disposing of the proceeding, and the Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. At the time of and immediately prior to the issuing of the complaint herein, respondent Edward Frohlich was and now is carrying on his business in the City of Detroit, State of Michigan, under the name and style of Frohlich Glass Company, and engaged in the manufacture and sale of paints, oils and similar products to the trade, and causing a substantial portion of said products to be transported from the State of Michigan to purchasers in other States and Territories of the United States, and is in direct competition with other individuals, partnerships and corporations similarly engaged.

PAR. 2. At the time of and immediately prior to the issuing of said complaint, respondent E. A. Benedict was residing in Cleveland, Ohio, and was engaged in the business of selling paints, oils and similar products on commission for the respondent Edward Frohlich, and causing said products to be delivered to retail dealers purchasing the same and doing business in States other than those in which the same were manufactured, and in direct competition with other individuals, partnerships and corporations similarly engaged.

PAR. 3. About the year 1913 respondent Benedict devised a certain label for use on containers for paint and used the same for a period of time. The use of this label was then discontinued for a period of four or five years and its use again resumed about the year 1920. In the course of his said business for and with the respondent Frohlich, as in paragraph 2 set out, respondent Benedict suggested to respondent Frohlich, and respondent Frohlich, pursuant to such suggestion and at the request of Benedict, placed said label upon house paint manufactured by Frohlich and paint bearing said label was delivered to said customers by Benedict. House paint so labeled was sold and delivered in quantities by respondents, acting in concert, to retail dealers in various States dealing in so-called Army and Navy goods but carrying also stocks of other merchandise. The label herein referred to bore the words "U. S. Quality Paint" and did not bear the name of the manufacturer.

PAR. 4. At the time respondents were selling the paints so labeled there was, and now is, a large number of stores and dealers throughout the country engaged in the sale of so-called Army and Navy goods, that is, goods manufactured for the use of the United States Government or according to United States specifications and requirements.

PAR. 5. Said paint was manufactured by respondent Frohlich Glass Company according to its own formula and had never been manufactured for the United States Government nor according to

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any formula or specification or requirement of the United States Government, and had never been used by the United States Government.

PAR. 6. By reason of the use of such label, and by reason of the fact of the advertisement for sale generally of Government surplus goods by Army and Navy stores throughout the country, the customers of respondents were thereby enabled to advertise and sell said paint to the consuming public as paint manufactured for the United States Government or according to its specifications and requirements and such label had, and has, the capacity and tendency to mislead the purchasing public into the belief that said paint was a high grade paint manufactured for the use of the United States Government and prepared according to the specifications and requirements of the Government and of the quality required by such specifications and requirements.

#### CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, and 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 and answer and stipulation and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion, that the respondents have violated 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,"

*It is now ordered*, That the respondents, Edward Frohlich and E. A. Benedict, their agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Using a label, mark or brand containing the words "U. S. Quality Paint" upon paint manufactured or sold by them or either of them, or any similar label, mark or brand that would tend to induce the belief that said paint was manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government, unless the paint in the containers upon which said label is used, is or was manufac-

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tured for use by the United States Government or prepared according to the specifications or requirements of the United States Government.

(2) Selling or offering for sale in commerce paint, the containers of which bear the label, mark or brand "U. S. Quality Paint," or any similar label, mark or brand that would tend to induce the belief that the paint therein contained was manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government, unless the paint in the containers so labeled was, and is, in fact manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government.

*It is further ordered,* That said respondents shall within thirty (30) days from the date of the service of this order file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

## FEDERAL TRADE COMMISSION

*v.*UTAH-IDAHO SUGAR COMPANY, THE AMALGAMATED  
SUGAR COMPANY, E. R. WOOLEY, A. P. COOPER AND  
E. F. CULLEN.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 303—October 3, 1923.

## SYLLABUS.

Where two corporations engaged in the purchase of sugar beets and in the manufacture and sale of beet sugar therefrom, which (1) were the result of various consolidations and acquisitions of theretofore competing enterprises, (2) were in close and immediate relationship through common stockholders, directors and officers, and (3) enjoyed a practical if not complete monopoly of the beet sugar industry in the States of Utah, Idaho, Oregon, Washington and Nevada; and certain individuals; in the accomplishment of a conspiracy entered into for the purpose of maintaining said monopoly and preventing and suppressing competition in said territory, jointly and severally

- (a) Established a territorial division of beet producing territory in each of which divisions one or the other of said corporations, as the case might be, should have the sole right to operate;
- (b) Disparaged and misrepresented competitive enterprises by asserting to farmers available for, or under, contracts to grow beets therefor, to stockholders and to stock subscribers therein, to supporters thereof and to persons interested therein, and to prospective investors, that the particular enterprise, as the case might be, was financially unsound, would not succeed, was unethically invading the corporation's territory, would not be able to secure machinery, building materials, seed, or sugar beets from nearby land due to the character thereof; by attacking the kind of equipment used; by spreading through undisclosed representatives false and misleading stories concerning the solvency, management and prospects of such enterprises among creditors, stockholders, prospective investors and employees, in an effort to throw the same into the hands of a receiver; and by numerous other false, misleading and unfair statements concerning the same; made at local meetings promoted for such purpose, in advertisements in a large number of newspapers, and otherwise;
- (c) Disparaged and misrepresented the character, standing, etc. of individuals responsible for the promotion and/or management and operation of competitive enterprises;
- (d) Intimidated or sought to intimidate a bank through indirect threats of reprisal if it did not cease supporting a competing enterprise; and those interested in such enterprises through threats to build near-by and the purchase of adjoining sites and the breaking of ground as an apparent preliminary to the building of a factory, but without the intention so to do, and through threats to force up the price of sugar beets, to "make it so hot" the promoters would wish they had never started the undertaking, to go to any length necessary to ruin the enterprise, etc.;
- (e) Instituted vexatious and groundless suits by secret representatives against competitors, and secretly employed persons to acquire stock

therein in order to bring a stockholders' action to secure the appointment of a receiver;

- (f) Acquired the properties or businesses of competing enterprises, or stock control thereof, through the use of secret representatives and by means of false statements, for the purpose of eliminating such enterprises as competitors and removing individual competitors from the field as officers of or dominating spirits in, such enterprises;
- (g) Betrayed and eliminated a prospective competitive enterprise through an undisclosed representative who took part in the organization and financing thereof, withheld promised support when said enterprise was on the point of successful consummation, and forced the sale of its assets to one of said corporations;
- (h) Cut off, or sought to cut off, competitive enterprises from their source of supply by ascertaining where it contemplated securing seed and negotiating secretly with such sources for the purchase thereof, thereby making it impossible for said enterprise to secure the same;
- (i) Induced breach of contract by farmers under agreement to supply competing enterprises with sugar beets, through the loan of money on long time mortgages at 6%, and otherwise, and sought to induce breach of such contracts;
- (j) Obstructed, harassed and forestalled competitors through using their influence to prevent concerns whom they patronized, from entering into contracts with said competitors to put up and equip factories, and to bring about the abrogation of preliminary agreements of such a character already entered into; through undertaking to induce the Priority Committee of the Government during the War, by means of a pretended disinterested letter and false and misleading statements to refuse permits for the shipment of building materials and machinery necessary for the construction of a competing enterprise's factory; and through acquisition of stock or properties; and
- (k) Subsidized, or sought to subsidize weekly and daily newspapers circulating in the various States in the Rocky Mountain country where competing enterprises were operating, through the purchase of advertising space in said papers together with a notice to the papers that in extending its advertising activities as contemplated, it would select mediums found friendly and loyal to its organization; and banks through the making of large deposits therein for the purpose of securing their assistance in obstructing the financing of competing enterprises;

With the result that competition in the purchase of sugar beets and in the manufacture and sale of beet sugar in the States of Utah, Idaho, Oregon, Washington and Nevada was obstructed, hindered, and eliminated:

*Held*, That such 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 the Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Wooley, A. P. Cooper, and E. F. Cullen, all 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

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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 amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Utah-Idaho Sugar Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, having its principal office and place of business located at the City of Salt Lake in the State of Utah. That said respondent owns and operates factories for the manufacture and refining of sugar, located respectively at Lehi, Garland, Elsinore, Payson, Spanish Fork, and West Jordan, Utah, and Idaho Falls, Sugar City, Blackfoot and Shelly, Idaho, and Toppenish, Washington, with factories at North Yakima and Sunnyside, Washington, in the course of construction. That the respondent, The Amalgamated Sugar Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, having its principal office and place of business located at the City of Ogden, in the State of Utah. That said respondent owns and operates factories for the manufacture and refining of sugar, located respectively at Ogden, Brigham, Smithfield and Lewiston, Utah, and Burley, Paul and Twin Falls, Idaho. That the respondents, E. R. Wooley, A. P. Cooper and E. F. Cullen, are all residents of the State of Utah, residing in the City of Salt Lake.

PAR. 2. That the respondents, Utah-Idaho Sugar Company and The Amalgamated Sugar Company, are now and for more than one year last past have been engaged in the purchase in interstate commerce of sugar beets from growers or purchasers thereof, transporting such sugar beets to refineries and factories owned and operated by said respondents and there manufacturing the same into refined beet sugar and selling and shipping such manufactured refined beet sugar to purchasers located in States and Territories of the United States other than the States in which such refined beet sugar is manufactured in direct competition with other persons, corporations, co-partnerships and firms similarly engaged.

PAR. 3. That all of the above-named respondents, each with the knowledge of the other, and with the effect of stifling and suppressing competition in the purchase in interstate commerce of sugar beets and in the manufacture and sale of refined beet sugar in interstate commerce, are now and for more than one year last past, have by combination and conspiracy among themselves entered into and engaged in the unfair practices hereinafter alleged.

PAR. 4. That the aforesaid combination and conspiracy, in furtherance of and to effectuate the object of unfairly hampering and obstructing competitors in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar and of preventing and forestalling competitors from engaging in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar, has been effected and carried out by various means and methods, among them the following, to wit:

(a) The circulation of false, misleading and unfair reports and statements concerning the financial standing and responsibility of competitors and prospective competitors, and the method and manner of transacting their said business.

(b) The circulation of false, misleading and unfair reports and statements that competitors and prospective competitors would be unable to obtain or secure sugar beet seed; that said competitors and prospective competitors would be unable to secure an adequate supply of sugar beets to supply their factories, and that competitors and prospective competitors would be unable to pay producers or growers for sugar beets purchased.

(c) The circulation of false, misleading and unfair reports and statements that respondents occupy all of the producing territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar; that respondents have contracts for the purchase of all beets to be grown; that growers in the vicinity of the factories operated by respondents fail to produce enough beets to supply respondents' factories and that the territory is unfit for the production of sugar beets.

(d) Canvassing the territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar, procuring and making future long-term contracts with growers or producers for the purchase of sugar beets and advancing and lending money to said growers and producers on such contracts.

(e) By using the great wealth, power and financial influence at their command to cause railroads to delay building tracks and spurs to serve competitors and prospective competitors and to cause banks and others to refuse credit to and to discourage prospective competitors of respondents who were promoting corporations which were intending to operate beet sugar fac-

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tories and to engage in the manufacture and sale of refined beet sugar.

(f) Unfairly and surreptitiously obtaining information concerning the private affairs and business of competitors and prospective competitors and using the information so obtained in buying out competitors and prospective competitors and attempting to destroy competitors and prospective competitors by circulating reports tending to provoke litigation and to incite financial trouble and embarrassment.

(g) By using the great wealth, power and influence at their command to erect and put into operation beet sugar factories in the territory where prospective competitors had undertaken to start in competition in the beet sugar business and to contract for the purchase of all available sugar beets upon learning that prospective competitors had undertaken to start in competition in the beet sugar business.

(h) Preventing or hindering and attempting to prevent and hinder Dyer & Company, of Cleveland, Ohio, the most prominent manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States, from building and equipping beet sugar factories for competitors and prospective competitors.

(i) The circulation of false, misleading and unfair reports and statements that beet sugar factories of prospective competitors who were intending to erect and operate beet sugar factories, would not be built and that the beet sugar factory machinery of prospective competitors would not make beet sugar.

(j) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of inciting financial trouble and embarrassment to competitors and prospective competitors and by annoying and harassing competitors and prospective competitors by instituting vexatious and unjustified litigation.

(k) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of purchasing or acquiring the controlling interest of prospective competitors who were erecting beet sugar factories and intending to engage in the manufacture and sale of refined beet sugar.

(l) By divers other means and methods, all in furtherance of and to effectuate the object of the destruction of competition of beet sugar factories and of preventing and forestalling competitors from engaging in interstate commerce in the manufacture and sale of refined beet sugar.

PAR. 5. That each of the respondents is now and for more than one year last past, with the effect of stifling and suppressing competitor

in the purchase in interstate commerce of sugar beets and in the manufacture and sale of refined beet sugar in interstate commerce, has been unfairly hampering and obstructing competitors in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar and preventing and forestalling competitors and prospective competitors from engaging in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar by various means and methods, among them the following, to wit:

(a) The circulation of false, misleading and unfair reports and statements concerning the financial standing and responsibility of competitors and prospective competitors, and the method and manner of transacting their said business.

(b) The circulation of false, misleading and unfair reports and statements that competitors and prospective competitors would be unable to obtain or secure sugar beet seed; that said competitors and prospective competitors would be unable to secure an adequate supply of sugar beets to supply their factories, and that competitors and prospective competitors would be unable to pay producers or growers for sugar beets purchased.

(c) The circulation of false, misleading and unfair reports and statements that respondents occupy all of the producing territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar; that respondents have contracts for the purchase of all beets to be grown; that growers in the vicinity of the factories operated by respondents fail to produce enough beets to supply respondents' factories and that the territory is unfit for the production of sugar beets.

(d) Canvassing the territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar, procuring and making future long-term contracts with growers or producers for the purchase of sugar beets and advancing and lending money to said growers and producers on such contracts.

(e) By using the great wealth, power and financial influence at their command to cause railroads to delay building tracks and spurs to serve competitors and prospective competitors and to cause banks and others to refuse credit to and to discourage prospective competitors of respondents who were promoting corporations which were intending to operate beet sugar fac-

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tories and to engage in the manufacture and sale of refined beet sugar.

(f) Unfairly and surreptitiously obtaining information concerning the private affairs and business of competitors and prospective competitors and using the information so obtained in buying out competitors and prospective competitors and attempting to destroy competitors and prospective competitors by circulating reports tending to provoke litigation and to incite financial trouble and embarrassment.

(g) By using the great wealth, power and influence at their command to erect and put into operation beet sugar factories in the territory where prospective competitors had undertaken to start in competition in the beet sugar business and to contract for the purchase of all available sugar beets upon learning that prospective competitors had undertaken to start in competition in the beet sugar business.

(h) Preventing or hindering and attempting to prevent and hinder Dyer & Company, of Cleveland, Ohio, the most prominent manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States, from building and equipping beet sugar factories for competitors and prospective competitors.

(i) The circulation of false, misleading and unfair reports and statements that beet sugar factories of prospective competitors who were intending to erect and operate beet sugar factories would not be built and that the beet sugar factory machinery of prospective competitors would not make beet sugar.

(j) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of inciting financial trouble and embarrassment to competitors and prospective competitors and by annoying and harrassing competitors and prospective competitors by instituting vexatious and unjustified litigation.

(k) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of purchasing or acquiring the controlling interest of prospective competitors who were erecting beet sugar factories and intending to engage in the manufacture and sale of refined beet sugar.

(l) By divers other means and methods, all in furtherance of and to effectuate the object of the destruction of competition of beet sugar factories and of preventing and forestalling competitors from engaging in interstate commerce in the manufacture and sale of refined beet sugar.

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

The Federal Trade Commission having issued and served its complaint herein, upon the respondents, Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Wooley and A. P. Cooper, the respondent E. F. Cullen not being served, wherein it is alleged that it had reason to believe that said respondents have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of the Act of Congress approved September 26, 1924, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondents having entered their appearance by their respective attorneys, and having filed their answers admitting certain of the allegations of said complaint and denying certain others thereof, and the Commission having introduced testimony and evidence in support of the charges in said complaint, and the respondents having introduced testimony and evidence in opposition thereto, and counsel for the Commission, Utah-Idaho Sugar Company, The Amalgamated Sugar Company and E. R. Wooley, having filed briefs as to the law and facts in said proceeding, and the Commission having heard the argument of the respective counsel on the merits of the case, except that The Amalgamated Sugar Company and E. R. Wooley through their counsel rested their case on their brief, and having duly considered the record and being fully advised in the premises, now makes this its report in writing, stating its findings as to the facts and conclusions as follows:

**FINDINGS AS TO THE FACTS.**

Respondent, Utah-Idaho Sugar Company, is a corporation organized under the laws of the State of Utah in the year 1907, with its principal place of business in the City of Salt Lake in said State. It was organized for the purpose of consolidating, and did consolidate, into a single corporation a number of theretofore separate competing corporations all engaged in the purchase of sugar beets and the manufacture and sale of beet sugar and other products of the sugar beet in various States of the United States. The companies thus consolidated and merged into said Utah-Idaho Sugar Company, were as follows:

- (1) The Utah Sugar Company incorporated in the year 1890, with its principal place of business and a factory for the manufacture of beet sugar at the City of Lehi, Utah, with a beet slicing capacity of about 1,000 tons per day. (A ton of beets will

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make anywhere from 150 to 275 pounds of sugar, dependent upon soil and seasonal conditions).

(2) The Idaho Sugar Company incorporated in the year 1903, with its principal place of business and a factory for the manufacture of beet sugar at the City of Idaho Falls in the State of Idaho, with a beet slicing capacity of 900 tons per day. In the year 1905 this company acquired the Fremont Sugar Company, which had its principal place of business and a factory for the manufacture of beet sugar at the town of Sugar City in the State of Idaho with a beet slicing capacity of 900 tons per day.

(3) The Western Idaho Sugar Company incorporated in the year 1905, with its principal place of business and a factory for the manufacture of beet sugar at the City of Nampa, State of Idaho, with a beet slicing capacity of 800 tons per day.

After the creation of the Utah-Idaho Sugar Company in the year 1907, as above set out, that company has built or acquired the following additional factories:

(1) A factory at the town of Elsinore, Utah, built in 1911, with a beet slicing capacity of 800 tons per day.

(2) A factory at the town of Payson, Utah, built in 1913, with a beet slicing capacity of 650 tons per day.

(3) A factory at the town of West Jordan, Utah, built in 1916, with a beet slicing capacity of 650 tons per day.

(4) A factory at the town of Yakima, State of Washington, built in 1917, with a beet slicing capacity of 650 tons per day.

(5) A factory at the town of Brigham City, Utah, built in 1916, with a beet slicing capacity of 650 tons per day.

(6) A factory at the town of Toppenish, Washington, built in 1917, with a beet slicing capacity of 750 tons per day.

(7) A factory at the town of Sunnyside, Washington, moved from Grants Pass, Oregon, in 1919, with a beet slicing capacity of 650 tons per day.

(8) A factory at the town of Delta, Utah, built in 1920, with a beet slicing capacity of about 700 tons per day.

(9) A factory at Spanish Fork, Utah, removed thither from Nampa, Idaho, in 1916. The beet slicing capacity of the factory is 800 tons per day.

Respondent, The Amalgamated Sugar Company, is a corporation organized in the year 1902, under the laws of the State of Utah, with its principal place of business in the City of Ogden, in said State. It was organized for the purpose of consolidating, and did consolidate, into a single corporation two separate competing corporations engaged in the purchase of sugar beets and the manufacture of and

sale of beet sugar and other products of the sugar beet in various States of the United States. The companies thus consolidated with and merged into the Amalgamated Sugar Company were as follows:

(1) The Ogden Sugar Company, incorporated in the year 1898, with its principal place of business and a factory for the manufacture of beet sugar in the City of Ogden, Utah, with a beet slicing capacity of 900 tons per day.

(2) The Logan Sugar Company, incorporated in the year 1901, with its principal place of business and a factory for the manufacture of beet sugar in the town of Logan, Utah, with a beet slicing capacity of 650 tons per day.

(3) This respondent in the year 1912 erected a further factory near the town of Burley, Idaho, with a beet slicing capacity of 600 tons per day.

By reincorporation under the name "The Amalgamated Sugar Company" in the year 1915, this respondent absorbed and consolidated with the two companies above mentioned:

(4) Lewiston Sugar Company, a corporation organized in 1903, with its principal place of business and a factory in the town of Lewiston, Utah. At the time of such consolidation the beet slicing capacity of its said factory was 800 tons per day.

Since said reorganization, this respondent has erected or acquired the following additional beet sugar factories:

(5) A factory located near the town of Twin Falls, Idaho, erected in 1916, with a beet slicing capacity of about 800 tons per day.

(6) A factory at Paul, in the State of Idaho, erected in the year 1917, with a beet slicing capacity of about 650 tons per day.

(7) A factory located near the town of Smithfield, Utah, erected in 1916, with a beet slicing capacity of about 800 tons per day.

The factories of the corporate respondents, the dates of their acquisition and their geographic location are more fully described in the attached map,<sup>1</sup> which is used for the purpose of illustration only, and is made a part of the findings, but is not an exhibit in the proceeding.

From the time of their acquisition or erection, said respondents have continuously operated and still operate the foregoing factories in the manufacture of beet sugar and other products, such as sugar molasses, derived from the sugar beet in competition with other individuals, partnerships and corporations similarly engaged, and have continuously sold said commodities to purchasers in various States of the United States. (The molasses is shipped to points where said

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<sup>1</sup> Not published.

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corporations maintain special equipment in connection with a few of their factories, for the purpose of manufacturing said molasses into refined beet sugar). Refined beet sugar is the product principally so sold and references to said product will hereinafter be limited thereto. Respondents ship said beet sugar, when so sold from their said several manufacturing factories to said purchasers at points in States other than the State of said manufacture, in competition with other individuals, partnerships and corporations similarly engaged in the production and/or sale of beet and cane sugar in interstate commerce.

The sugar beets from which respondents manufacture the aforesaid product are secured from farmers so far as possible in territory adjacent, in each instance, to aforesaid factories. From time to time, however, and as considerations of convenience and other circumstances render the same desirable or necessary, respondents purchase and ship sugar beets from territory not so contiguous, and in many instances, in a State or States other than that in which is located the factory at which said beets are to be converted into sugar. In such instances they ship the sugar beets thus secured from points in the State where purchased to such factory located in such other State.

For many years it has been the practice of these respondents annually, in advance of the growing season to send agents, by them denominated field men and agricultural superintendents, among the farmers in the States of Utah, Idaho, Oregon, Nevada and Washington, for the purpose of entering with said farmers into contracts whereby the farmers undertake to grow sugar beets for said respondents under their supervision, in consideration of certain prices to be paid by respondents partly before and partly after the same are manufactured into sugar. With few exceptions, all the sugar beets procured by said respondents for conversion in their factories, as heretofore set out, have been and are purchased in the performance of said contracts. For many years, and as a regularly recurring annual practice, said respondents have secured, and still secure, many thousands of tons of sugar beets in the manner above set out, which beets have been and are, converted into sugar at said factories, and said product regularly has been, and is, in the ordinary course of business, shipped and sold by said respondents in interstate commerce. There has thus existed for many years, and still exists, a regular flow or current of interstate commerce in sugar beets and beet sugar, beginning with the contracts for and production of said sugar beets, which are sent from the States, in many instances, where the same are produced, with the expectation that they will end their transit in the form of beet sugar after the purchase of that commodity in other States, which current of commerce includes all cases where purchases of beets are made by respondents for shipment to another

State or for conversion within the State where purchased and the shipment outside of the State of the beet sugar resulting from such conversion.

There has been since the formation of the companies afterward merged into the Utah-Idaho and The Amalgamated Companies, as hereinbefore set out, (hereinafter referred to as predecessor companies) and continuously has been, a close and intimate relation between the prominent stockholders, directors and officers of the predecessor and of the consolidated companies. Joseph F. Smith was President of the Utah Sugar Company, the Idaho Sugar Company, the Fremont Sugar Company, and the Western Idaho Sugar Company, while Horace G. Whitney was at the same time Secretary of each of said companies. Upon the organization of the respondent, Utah-Idaho Sugar Company, Joseph F. Smith became President and Horace G. Whitney became Secretary-Treasurer of that company. Joseph F. Smith likewise became President of respondent, The Amalgamated Company, upon its incorporation in 1902, and continued in that capacity until the year 1915 when he was succeeded by Anton Lund, a heavy stockholder in both the Utah-Idaho and the Amalgamated Companies. Thomas R. Cutler was General Manager of the predecessor companies later merged into the Utah-Idaho Company, was for some time thereafter General Manager of that company, and was a Director of The Amalgamated Company at the time of its organization in 1902. William H. Wattis in 1914 was President of respondent, The Amalgamated Company, and was a member of its Board of Directors in 1915, 1916 and 1917. In the last named year he became a Director of the Utah-Idaho Sugar Company and was placed upon its Executive Committee. In 1919 he was a prominent stockholder in The Amalgamated Company and in 1920 a heavy stockholder in the Utah-Idaho Company. Of the last named company, he became General Manager in 1921, and had been connected with that company in one capacity or another for a great many years. Charles W. Nibley was connected officially with The Amalgamated Sugar Company from the time of its original incorporation until the absorption of the Lewiston Company in 1916. In 1915 he was a Director of the Utah-Idaho Company and in 1917 became its General Manager. L. R. Eccles was Vice President of the Lewiston Company at the time of its consolidation with The Amalgamated Company in 1915, and in that and the following year was a Director of the Utah-Idaho Company, in which capacity he was succeeded by his brother D. C. Eccles in 1917. L. R. Eccles was also Vice President, General Manager and a Director of The Amalgamated Company from 1915 to September of 1918. D. C. Eccles was a Director of the Utah-

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Idaho Company in 1916 and 1917, and a Director of The Amalgamated Company in 1915 and 1916. Joseph Geohegan was a Director of the Utah-Idaho Company at the time of its organization and his company, the Geohegan Brokerage Company, was joint sales agent for The Amalgamated and the Utah-Idaho Companies up to the year 1916, when he died. Besides these more prominent and influential persons, there were a number of others who from time to time were stockholders, directors, administrative or other officials and employees of both The Amalgamated and the Utah-Idaho Companies, being frequently attached in some capacity to both these respondents at the same time.

At an early period a mutual understanding and intention was manifested between respondents, Utah-Idaho and Amalgamated Companies (hereinafter referred to as corporate respondents), to absorb and retain for themselves the gradually expanding beet sugar industry beginning in the State of Utah and spreading thence to the States of Idaho, Washington, Oregon, Nevada and Montana.

H. O. Havemeyer, President of the American Sugar Refining Company, was a large stockholder in corporate respondents. He became identified with their interests sometime prior to the year 1902 and was active in giving assistance and advice in the matter of absorbing and retaining said industry and of keeping independent enterprises<sup>2</sup> out of the field, as hereinafter referred to. Corporate respondents reported to him the efforts of independent enterprises to invade the field and what efforts were being made to suppress or absorb them and in turn he advised and ordered what steps should be taken in that behalf. He was uniformly offered the opportunity to participate in stock purchases when independent enterprises were acquired or controlled in that manner. At his death his son Horace Havemeyer, as administrator, succeeded him in the management of his interests in corporate respondents and their stock controlled companies.

In the year 1903 the predecessor companies of corporate respondents held a joint meeting of their Boards of Directors, presided over by Joseph F. Smith. The purpose of the meeting was to eliminate an independent beet sugar company which proposed to erect a factory at Lewiston, Utah, for the avowed reason that "the proposed factory would be a menace to the existing companies." The Lewiston Company was afterward absorbed by the respondent The Amalgamated Company, as hereinbefore set out.

In the year 1905 the predecessor companies of respondent Utah-Idaho Company forestalled and prevented one Boutell and one

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<sup>2</sup> The words "independent enterprise" are used throughout these findings to designate enterprises other than, and competing with or potential competitors of, the Utah-Idaho and The Amalgamated Sugar Companies.

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Hoover from financing and establishing an independent enterprise near Payette in southwestern Idaho or Arcadia, Oregon. This was done through Thomas R. Cutler, Manager of said predecessor companies, by promising to erect a factory near Payette and using influence to persuade the farmers of the vicinity to enter into beet contracts with said predecessor companies. H. O. Havemeyer instructed said Cutler to buy a factory site in the same town Boutell and Hoover might decide to locate and to do the same with regard to any independent enterprise seeking to enter the States wherein said predecessor companies were operating. Said Cutler used certain influence at his command to stop the operations of Messrs Boutell and Hoover, both near Payette and at other points, notably at Boise, Idaho. As a result of aforesaid things done by said predecessor companies, all efforts of said Boutell and Hoover to establish an independent enterprise in the State of Idaho were frustrated and notably at the towns of Payette, Boise and Nampa, and thus the establishment of said independent enterprise at either place and the potential competition thereof with corporate respondents was forestalled and prevented.

By the year 1905 the predecessor companies of the Utah-Idaho Company bought sufficient stock to control the Snake River Valley Company, an independent enterprise then competing with the predecessor companies of corporate respondents, which owned and was operating a beet sugar factory at Black Foot, Idaho. This was the result of efforts in that behalf begun by the predecessor companies of respondent Utah-Idaho Company, through aforesaid Cutler as early as the year 1905, when he began buying up stock in said independent enterprise. He wrote H. O. Havemeyer that he was anxious to obtain control of said independent enterprise for said predecessor companies and that they were determined to get said independent enterprise into their hands. Said independent enterprise was later absorbed by said predecessors as above set out, thereby eliminating the competition which had theretofore existed between said independent enterprise and the predecessor companies of corporate respondents.

The Layton Sugar Company was incorporated in the year 1915 for the purpose of erecting a beet sugar factory at the town of Layton, Utah, and engaging in the business of purchasing sugar beets and of manufacturing and selling beet sugar in interstate commerce. Upon its organization and by agreement such corporate respondent invested \$100,000.00 in the stock of said company, and these holdings together with the holdings of others closely identified in other interests with corporate respondents, put into the hands of the said respondents the control of the operation of the Layton

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Sugar Company with the effect of preventing any competition between that company and corporate respondents.

In the year 1909 the corporate respondents agreed upon an interstate territorial division of beet producing territory in which boundary lines were established defining the territory in which The Amalgamated Company should have the sole right to operate without invasion by the Utah-Idaho Company, and vice versa. This agreement continued to the year 1916 when it was superseded by a similar agreement rearranging such boundary lines and territory.

By the year 1916 corporate respondents together (but not in the sense of joint ownership) owned or controlled all the beet sugar factories in the States of Utah, Idaho, Nevada, Oregon and Washington, including factories built by themselves and the factories of independent enterprises which they had acquired, wholly or partly, through obstructive, coercive, and unfair methods as herein set out, and in connection with such building and acquisition had prevented the entry of other proposed independent enterprises into the field by means of similar obstructive and suppressive measures. As a result said respondents were sometime prior and up to the year 1916, enjoying a practical if not an entire monopoly of the beet sugar industry in the States above mentioned.

At this time each respondent was possessed of monies, assets and properties to the value of many millions of dollars. The Utah-Idaho Sugar Company was originally capitalized at \$13,000,000, which was increased to \$30,000,000 in May, 1917. The properties and assets of the three predecessor companies merged in the Utah-Idaho Company at the time of said merger were of the total value of over \$11,000,000. The Amalgamated Sugar Company was capitalized at \$25,000,000, which after two increases was finally fixed at \$30,000,000. At the time the conspiracy hereinafter set out was entered into, the corporate respondents were enjoying a very large and lucrative business, as is shown by the following table of the combined total sales of beet sugar by said respondents in interstate and intrastate commerce during the years indicated:

| Total sales |                     | Interstate distribution |                     |
|-------------|---------------------|-------------------------|---------------------|
|             | <i>100-lb. bags</i> |                         | <i>100-lb. bags</i> |
| 1916.....   | 2, 644, 949         | 1916.....               | 2, 250, 820         |
| 1917.....   | 2, 824, 557         | 1917.....               | 2, 342, 586         |
| 1918.....   | 2, 458, 678         | 1918.....               | 1, 901, 205         |
| 1919.....   | 2, 565, 870         | 1919.....               | 1, 895, 017         |

The general management and control of all the aforesaid business and activities of corporate respondents were and are exercised by them from their principle offices in the Cities of Salt Lake and Og-

den, Utah, respectively, from which points they control the procuring and handling of sugar beets from field to the factory, the operations of said factories, the diversion of beets from one to the other, the extension and development of the beet growing industry, the location and erection of new factories, and the closing down and removal of factories, from one place to another from time to time, and in divers instances across State lines, all in a manner to consolidate and unify their large operations, and to best prevent or hinder the competition of independent enterprises entering or desiring to enter into said industry in aforesaid States in which respondents operate, and thus to secure and retain to said respondents aforesaid monopoly of the beet sugar industry in said territory.

In about the year 1915, respondents, Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Wooley, A. P. Cooper, and E. F. Cullen, secretly agreed, conspired and confederated with each other to maintain and retain the aforesaid monopoly of corporate respondents, to prevent the establishment of beet sugar enterprises and the building of sugar factories by persons or interests other than respondents, The Amalgamated Sugar Company and the Utah-Idaho Sugar Company, and to suppress all competition in the manufacture, sale and distribution of beet sugar in the States of Utah, Idaho, Nevada, Oregon and Washington, and in the sale in interstate commerce of refined beet sugar produced in those States. At the time of the issuance of the complaint herein and the filing of their answer to the same, respondents E. R. Wooley and A. P. Cooper were residents of Salt Lake City in the State of Utah. Respondent E. F. Cullen was not served with the complaint, and will not be considered further as a respondent in these proceedings. The acts and things done by the said Cullen, however, in so far as they throw light upon the acts and things done by the other respondents herein, are hereinafter referred to.

Pursuant to, and to effect the objects of aforesaid secret agreement, conspiracy and confederation, and to accomplish the purpose thereof, respondents did the following acts and things:

(a) In the fall of 1915 and the spring of 1916, one John A. Hendrickson, a resident of Logan, Utah, promoted with the assistance of others, an independent enterprise with the intention of erecting a beet sugar factory near the town of Smithfield, in said County and State, with the purpose and intention of engaging in the manufacture of beet sugar and the sale of that product in interstate commerce. The town of Smithfield and its vicinity lay in the territory allocated to The Amalgamated Sugar Company under the division of interstate territory between the two corporate respondents, heretofore referred to and provided for in a certain contract, being Exhibit

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51<sup>8</sup> herein, which is hereby referred to and made a part of this finding. This independent enterprise secured an option upon a factory site and a large number of beet contracts with the farmers in the vicinity of said site, and, further, had the financing of the new enterprise well under way through stock subscriptions secured from farmers and business men in the vicinity of Smithfield and from other persons of financial responsibility in the State of Utah and elsewhere. When the corporate respondents learned that said independent enterprise was thus progressing, they called and held in the vicinity of the proposed independent factory meetings of aforesaid stock subscribers in said enterprise and farmers under contract to grow sugar beets for it. The purpose of said meetings was to discourage and dissuade said financial backers and farmers from further supporting said enterprise. Joseph Scowcroft, Director and Vice President of the respondent, The Amalgamated Company, Merrill Nibley, who became Assistant General Manager of the respondent, Utah-Idaho Company in 1916, Fred Taylor, Secretary and Treasurer of the respondent, The Amalgamated Company, and L. R. Eccles, a Director of the Utah-Idaho Company, attended said meetings and made statements to the effect that the independent enterprise was financially unsound, would not succeed, was unethically invading territory which belonged to The Amalgamated Company and that that company would itself build a factory near Smithfield in the immediate future. Shortly after said meetings held in the spring of 1916, the respondent, The Amalgamated Company purchased a site in close proximity to the site of the independent factory and started breaking ground as an apparent first step toward building a factory, but without the intention to so build, and in fact said factory was not built.

Said Hendrickson entered into a preliminary agreement with the Dyer Company for the erection of the independent factory. The Dyer Company is a corporation organized under the laws of the State of Ohio, with its principal office in the City of Cleveland in said State. It is, and for many years prior to 1916, had been engaged in the manufacture of machinery for the production of beet sugar, and in the building and equipping of beet sugar factories in many portions of the United States, and was the largest of such manufacturers and builders. Up to the time these proceedings were commenced the Dyer Company had built and equipped thirteen factories for respondent, Utah-Idaho Company, and four factories for the respondent, The Amalgamated Company. Upon learning that said agreement had been entered into, Charles W. Nibley, then a Director of respondent, Utah-Idaho Company, telegraphed the Dyer Company

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<sup>8</sup> Not published.

at Cleveland, Ohio, protesting against the erection of said independent factory, and as a result of said protest the Dyer Company withdrew from said preliminary agreement.

As a result of the aforesaid things, the financial backers and farmers who had contracted to grow beets for said independent enterprise were discouraged from continuing their support of the same, were induced to break their contracts and withdraw their undertakings of financial support, all of which resulted in the abandonment of said enterprise by said Hendrickson and his associates, and thus the establishment thereof and the potential competition between the same and corporate respondents in and about the purchase of beets and the manufacture and sale of beet sugar in interstate commerce was forestalled and defeated.

(b) In December, 1916, the West Cache Sugar Company, an independent enterprise, was incorporated under the laws of the State of Utah by aforesaid Hendrickson, one Lorenzo H. Stohl, and others for the purpose of erecting a beet sugar factory in Cache Valley or West Cache Valley in said State, and to purchase sugar beets and manufacture and sell beet sugar in interstate commerce. Said Hendrickson and Stohl were the promoters of said enterprise and became stockholders in said corporation. Hendrickson further became President, Treasurer and a Director in said Company upon its incorporation. Upon learning that said projected enterprise was under way, with the purpose, intent and object of maintaining their agreement, as referred to in Exhibit 51,<sup>4</sup> to the exclusion of competitors, respondents The Amalgamated Sugar Company and Utah-Idaho Sugar Company, through their various officers and agents, sought to discourage and prevent the establishment of said enterprise by threats uttered to said incorporators to the effect that these respondents would not permit any independent factory to be erected in said Cache Valley; that if the same should be erected, these respondents would force the price of sugar beets up to \$7.00 per ton (the prevailing price being then \$5.50); that said enterprise was an invasion of Amalgamated territory, and that if the West Cache Sugar Company succeeded in erecting a factory and entering into business, said respondent, The Amalgamated Sugar Company, would "make it so hot" for said company that its promoters would wish that they had never started the undertaking. The West Cache Company succeeded in erecting its factory and engaged in the years 1918 and 1919 in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce in competition with corporate respondents, whereupon respondent, The Amalgamated Sugar Company, financed and furnished funds to respondent Wooley, and through him bought

<sup>4</sup> Not published.

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up the stock control of the West Cache Company, and through the power thus secured, procured the discharge of said Hendrickson as an officer of said company, whereby respondents secured complete control of the management of said company and of its factory for the purpose of eliminating, and did eliminate, said company as a competitor. In order to discredit said Hendrickson and Stohl and thus destroy the influence they had and exerted in the management of said independent enterprise as the successful promoters thereof, a vexatious and groundless law suit was instituted by respondent Wooley under the secret and undisclosed instructions of respondent The Amalgamated Company, against said Hendrickson and Stohl charging them with fraudulent conversion of funds belonging to the West Cache Sugar Company. Said suit was afterward dismissed on its merits by a contract between said Hendrickson and Stohl on the one part and numerous parties including the respondent The Amalgamated Company on the other part. Pursuant to one of the terms of the said contract, said Hendrickson and Stohl sold and delivered to respondent, The Amalgamated Company, and its associates in said contract, all their stock in the West Cache Sugar Company. Said contract further provided that Hendrickson and Stohl should destroy by burning, certain evidence of unfair and illegal practices used by respondent Wooley and his associates in securing control of said independent. Hendrickson and Stohl carried out said provision by burning said evidence.

(c) The Beet Growers' Sugar Company, an independent enterprise, was incorporated in May, 1917, under the laws of the State of Idaho for the purpose of erecting a beet sugar factory near the town of Rigby, Idaho, and of engaging in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. Shortly after said incorporation and while said factory was in course of construction, respondents Utah-Idaho Company, Wooley, Cooper and Cullen, during the years 1917 and 1918, undertook to prevent the successful operation of said independent, and the erection of its factory by making false, unfair and misleading statements to farmers under contract to supply beets to said independent factory and to farmers with whom such contracts were or would be made, and to stockholders of said independent company to the effect that the company would not be able to get beet seed to supply to contracting farmers nor to get the necessary machinery and building materials to complete said factory; that it would be financially unable to complete its factory; that the land in the vicinity of said factory would not produce sugar beets; that said independent company would not be able to pay for beets under contract; that the promoters of said enterprise were dishonest and that it was a dangerous investment.

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At this time respondents Cooper and Cullen were in the employ of said Beet Growers' Sugar Company as Consulting Engineer in charge of construction, and Bookkeeper, respectively. Said Cooper and Cullen sought to embarrass the Beet Growers' Company and to throw it into the hands of a Receiver by going about in the States of Utah and Idaho among its creditors, stockholders and those interested in the success of said enterprise and making false and misleading statements concerning said company to the effect that it was insolvent and that due to mismanagement it would not succeed. Respondents Cooper, Cullen and Wooley further sought to induce prospective investors not to purchase stock in, or otherwise finance the Beet Growers' Company, by making to said prospective purchasers similar false and misleading statements. Said Cooper and Cullen further made false and misleading statements to sundry employees of the Beet Growers' Sugar Company and others interested in its success, which statements were derogatory of the standing and reliability of the officers of said company, and statements to the effect that the financial condition of said company was bad and that said company was going into the hands of a Receiver. Respondent Wooley employed at Salt Lake City, Utah, David A. West and Ezra Ricks as secret and undisclosed agents to acquire stock in the Beet Growers' Company for the purpose of bringing a stockholder's action to secure the appointment of a Receiver for said company in the State of Idaho, which said suit was brought by said Ricks upon the alleged ground of dishonesty and mismanagement of said company's officers. Said charges, made the basis of said suit, were false and said suit was afterwards dismissed. Because of their aforesaid conduct, respondents Cooper and Cullen were discharged by the Beet Growers' Company, and thereafter they visited points in Utah and Idaho, making to stockholders and creditors of said company similar false and misleading statements, all in the attempt to throw said company into the hands of a Receiver and eliminate it as a competitor of corporate respondents.

In the spring of 1917, Merrill Nibley, Assistant General Manager of respondent Utah-Idaho Company, wrote to the Anderson Brothers Bank at Rigby, Idaho, intimating that said bank had been working in the interest of the Beet Growers' Sugar Company, and indirectly threatening the bank with reprisals if it did not cease supporting said independent enterprise and work in harmony with the Utah-Idaho Company.

(d) The Oregon-Utah Sugar Company, an independent enterprise, was incorporated in September, 1915, under the laws of the State of Utah, for the purpose of erecting a beet sugar factory at the town of Grants Pass, Oregon, and of engaging in the purchase

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of sugar beets and the manufacture and sale of beet sugar in interstate commerce. Charles W. Nibley, at that time a Director in both the Utah-Idaho and The Amalgamated Companies, assisted in the organization of said independent enterprise and in the financing thereof. As part of said financing said Nibley undertook to procure loans up to the amount of \$400,000 to defray operating expenses; the said Nibley from time to time and during the construction of said factory kept the respondent Utah-Idaho Company fully informed as to the progress then being made by the said Oregon-Utah Sugar Company and at no time was it the intention of the said respondent to permit said company to operate and compete with either it or The Amalgamated Sugar Company in the sale and distribution of beet sugar in interstate commerce. When the independent factory was almost completed and its operation an assured success, said Nibley withheld said financial support, and used his influence to force said independent enterprise to sell its said factory, property and other assets to said Utah-Idaho Company, which result was accomplished, thereby eliminating competition between said independent enterprise and the Utah-Idaho Company in the purchase of sugar beets and in the manufacture and sale of beet sugar in interstate commerce.

(e) In the years 1915 and 1916, one Colonel Mundy and others were promoting and endeavoring to establish an independent beet sugar enterprise in Southern Oregon, and to that end had obtained options for the purchase of 16,000 acres of land upon which to grow sugar beets. \$14,000 had been paid on said options. Mundy began negotiations to purchase an existing factory located at Fallon, Nevada, and belonging to the Nevada-Utah Sugar Company, with the intention of moving and re-erecting said factory upon the site finally chosen for his own enterprise. Upon learning of the progress of said independent enterprise, respondent Utah-Idaho Company sent certain of its agents from Salt Lake City, Utah, into Oregon, and especially the southern part of that State wherein said Mundy and his associates were operating, said agents being sent for the purpose of obtaining, and they did obtain, information as to the source or sources from which said enterprise intended to procure beet seed, which at that time, because of the war conditions, was exceedingly scarce and hard to obtain. Upon securing such information, said respondent secretly, through respondent The Amalgamated Company, negotiated for said seed in such a manner as to make it impossible for said independent enterprise to obtain same. The agents sent into Oregon, as aforesaid, further sought to discourage farmers and other persons interested, from growing beets for said independent enterprise and otherwise contracting with it, by statements to the effect that said independent enterprise had no beet seed and

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could not get any, and that their principal had bought up all the seed in the country; which statement was at that time untrue. Respondent Utah-Idaho Company through C. W. Nibley acquired 51% of the stock of the Nevada-Utah Sugar Company, which was not operating its factory, in order to prevent, and thus did prevent said Mundy and associates from securing the factory of said Nevada-Utah Company. As a result of aforesaid things done by respondent Utah-Idaho Company, the establishment of said independent enterprise by said Mundy and his associates was forestalled, and the potential competition between the same and corporate respondents in and about the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce was forestalled and prevented.

(f) The Montana-Utah Sugar Company, an independent enterprise, was incorporated in July 1916 under the laws of the State of Montana for the purpose of building a beet sugar factory near the town of Hamilton in said State, and to engage in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said independent enterprise negotiated with the Dyer Company for the construction of the factory up to the point where a price therefor had been fixed, when the Dyer Company refused to proceed on the ground that it would interfere with that company's two best customers, meaning corporate respondents. The Montana-Utah Sugar Company then let the contract for the building of its factory to another company, and said factory was about one-fourth completed, involving an expenditure, including payments on machinery of about \$350,000. Respondent Utah-Idaho Company about this time began to make and publish through agents and otherwise in Montana and in the district of Hamilton in said State, disparaging, untrue and misleading statements concerning the promoters and others interested in said enterprise, advised investors and prospective investors in said independent enterprise that the purchase of its stock was a bad investment, and otherwise prejudiced the financing of said independent enterprise with the result that subscriptions to its stock were cancelled and other financial support was withheld, as a result whereof said independent enterprise went into the hands of a Receiver. Thereafter, said enterprise was turned over to respondent Wooley upon his undertaking to reorganize and re-finance the same, and while in said respondent's hands and control was adjudged a bankrupt. Through the instrumentality of respondent Wooley the assets and other properties of said independent enterprise were sold to the Great Western Sugar Company. Said independent factory was not completed and potential competition between said independent enterprise and the corporate respondents in

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and about the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce were thus forestalled and prevented.

(g) The Gunnison Valley Sugar Company, an independent enterprise, was incorporated in 1917, under the laws of Utah, for the purpose of building a beet sugar factory at the town of Gunnison, in said State, and to engage in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. The site chosen was within the territory allocated to the Utah-Idaho Company under the agreement whereby that Company and The Amalgamated Company divided territory as hereinbefore set out. On learning of the activities of this independent, respondent Utah-Idaho Company sought to prevent the erection of said independent factory and the success of the Gunnison Valley Company by making, through various agents, false and misleading statements tending to discourage the purchase of stock in said independent, to obstruct the financing thereof and to discourage farmers in the vicinity from growing beets or contracting to grow beets for said independent enterprise. Said false and misleading statements were to the effect that the purchase of stock in said independent enterprise was a bad investment; that the machinery going into its factory was second-hand, corroded, worthless and would never make sugar; that said independent enterprise could not secure sufficient beet seed; that the land contiguous and naturally tributary to the site of said factory would not raise beets. Further, said respondent made attacks upon the character of promoters and other persons prominent in the financing and operation of said independent enterprise. Respondent Utah-Idaho Company further sought to prevent said independent enterprise from procuring supplies of sugar beets by seeking to induce one Royal M. Barney and others to break the contracts into which they had entered for the growing of sugar beets for said independent enterprise, and soliciting said Barney and others to act as its agent in persuading other beet growers to break their similar contracts with said independent enterprise, which at that time was an actual competitor of said respondent in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce.

(h) The Springville-Mapleton Sugar Company, an independent enterprise, was incorporated in June, 1917, under the laws of the State of Utah, for the purpose of erecting a beet sugar factory near the towns of Springville and Mapleton, in said State, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said company negotiated with the Dyer Company to build its said factory; whereupon,

respondent Utah-Idaho Company endeavored to prevent the Dyer Company from contracting for and erecting said factory through correspondence with the officials of the Dyer Company indirectly requesting that such construction be not undertaken. The effort failed and the Dyer Company contracted with said independent enterprise to build its said factory, and did subsequently build the same. Having failed in this, respondent Utah-Idaho Company endeavored to induce the Priority Committee of the United States Government to refuse permits for the shipment of building materials and machinery into the State of Utah necessary to the construction of the independent factory. The means used to accomplish this purpose were:

1. A letter written by Merrill Nibley, Assistant General Manager of the Utah-Idaho Company, to said Priority Committee, under date of October 1, 1917, in which letter misleading statements were made to the effect that the territory in question was already fully served by existing factories; that said factories had never been able to obtain their full requirements of beets from said district; that the proposed independent factory was not necessary and would not increase the food supply, and that the erection of said factory would draw heavily on the resources and labor of the country.

2. Mark Austin, at that time General Agricultural Superintendent of respondent Utah-Idaho Company, dictated and caused to be written a letter to said Priority Committee, containing similar untrue and misleading statements, and in addition containing some purported facts showing that the Utah-Idaho Company completely served the district in question and served it well, both with regard to the farmers' interests and the amount of sugar produced in said district. Said letter further stated that the farmers in that section considered the establishment of a new factory a serious mistake, and that in justice to the farmers it should not be done. Said letter further purported to be written by a farmer and beet grower of the section, who had the welfare of the farmer and the general industry at heart and was speaking from patriotic and disinterested motives. This letter said Austin caused one J. Wm. Johnson, an employee of the Utah-Idaho Company, to sign, and said letter was forwarded to said Priority Committee as a disinterested statement and expression of opinion of the said Johnson as a citizen of said district, reflecting the opinion of the citizens thereof. Said letter in no wise disclosed its real authorship, or that the purported writer thereof had any connection with, or in any manner spoke for the Utah-Idaho Company.

3. Fred G. Taylor, formerly Secretary of the Lewiston Sugar Company hereinbefore referred to, and Secretary of respondent, The Amalgamated Company, from 1915 to the summer of 1919, at which time he became a Director and the General Manager of said Com-

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pany, for a period of about nine months from October 1, 1917, resided in the City of Washington, D. C. During said period said Taylor's personal expenses, amounting to \$2,320, were paid and reimbursed to him, one-half each, by the corporate respondents.

In November, 1917, respondent, Utah-Idaho Sugar Company, telegraphed said Taylor in Washington, requesting him to use his efforts to persuade the Priority Committee and other Government officials of the "utter needlessness" of the said independent factory, for the purpose of hampering, hindering and delaying the operations of said independent enterprise and the building of its factory.

By reason of the things done and the tactics employed, as in this subdivision above set out, the operations of said independent enterprise and the building of its factory were hampered, hindered and delayed.

(i) The Idaho Cooperative Sugar Company, an independent enterprise, was organized under the laws of the State of Idaho in the year 1919 for the purpose of erecting a beet sugar factory near the town of Filer in said State, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. The site of this proposed independent factory is in territory allocated to the respondent, The Amalgamated Company, in the division of interstate territory between corporate respondents hereinbefore referred to, Exhibit 51. By June, 1920, said independent enterprise had sold \$375,000 worth of stock to farmers in the vicinity of Filer and to other persons, had bought land, and its factory and adjacent buildings were partly erected. Upon said enterprise thus showing substantial evidence of success, respondent Utah-Idaho Company, through one or more agents sought to discourage investors in the region of Filer and elsewhere from purchasing stock in said independent enterprise on the ground that such investors would lose money. Respondent, The Amalgamated Company, in the spring of 1920 deposited \$10,000 to its general account in a bank at Filer, Idaho, and in the same month made a substantial deposit in a bank in Kimberly, Idaho. Before this time said respondent had maintained no deposits either in these banks or in other banks in the towns of Filer and Kimberly. These deposits were made by respondent for the purpose of securing the cooperation and assistance of said banks in obstructing the financing of said independent enterprise and to prevent the obtaining of credit by it.

(j) The Southern Utah Company, an independent enterprise, was incorporated in November, 1915, under the laws of the State of Utah for the purpose of building a beet sugar factory near the town of Delta, Utah, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate com-

merce. Said company had entered into a contract for the erection of its factory and had sold stock in Utah and other places when respondent Utah-Idaho Company, through its agent, James M. Davis, threatened one of the Directors of said independent enterprise, saying in effect that respondent Utah-Idaho Company would not permit the erection of said independent factory and that if the same was erected, said respondent would go to any length necessary to ruin said independent enterprise, and, further, said respondent sent agents about the territory adjacent to said proposed factory to induce, and they did induce, farmers not to contract for growing beets for said independent enterprise and to break contracts already entered into. Among other inducements, this respondent offered to loan, and did loan, to farmers money on long-time mortgages at 6% interest and caused farmers by reason of such loans to break contracts which they had entered into with the Southern Utah Company. One James E. Steel besought Merrill Nibley, Assistant Manager of the Utah-Idaho Sugar Company, respondent, to desist from interfering with the plans of the Southern Utah Company and said Nibley's reply to Steel was "We have got them on the run and will keep them on the run." The attempt to construct a factory by the Southern Utah Company was thus abandoned.

Shortly thereafter the Delta Beet Sugar Corporation, an independent enterprise, was incorporated under the laws of the State of New York, for the purpose of building a beet sugar factory at the town of Delta, Utah, and to engage in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. The factory was built and operated by said Delta Beet Sugar Corporation in its aforesaid business in competition with the corporate respondents, and in September, 1918, the respondent, Utah-Idaho Company, secretly employed respondent, E. R. Wooley, to go to New York City, New York, and there interview the owner of the assets of said Delta Corporation, and the said E. R. Wooley made untruthful statements regarding the value of said corporation's factory, with the purpose and object of discouraging said owner to the end that he would quit operating said corporation's factory and convey the same to respondent, Utah-Idaho Company, at an unreasonably low price. Thereafter in January, 1920, respondent Utah-Idaho Company, through respondent Wooley, as its agent, purchased practically all the stock of said independent enterprise and all of its properties and assets in the name of the Great Basin Sugar Company to which company said stock, properties and assets were transferred. The Great Basin Sugar Company was organized under the laws of the State of Delaware by the respondent Wooley

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and certain individuals secured by him to act as incorporators and directors, for the purpose of acting as purchaser of aforesaid stock, properties and assets, which were purchased for the sum of \$1,600,000, and certain other considerations, and the transaction was financed by respondent Utah-Idaho Company. Thereafter the Great Basin Sugar Company sold to the respondent Utah-Idaho Company all said stock, properties and assets acquired from the Delta Beet Sugar Corporation. In connection with the foregoing transactions the Delta Beet Sugar Corporation and certain other individuals interested therein, executed a written contract never thereafter to engage in the sugar industry or in any allied or associated industry in the State of Utah. As a result of the foregoing transactions, said independent enterprise was merged with respondent Utah-Idaho Company and the competition theretofore existing between said independent enterprise and corporate respondents as hereinbefore set out, was eliminated.

(k) On or about March 8, 1920, the respondent Utah-Idaho Sugar Company caused to be published and circulated in nine newspapers in the State of Idaho, and in thirty-seven newspapers in the State of Utah, all circulating in the territory wherein competing independent enterprises and factories were and are operating, certain advertisements addressed to farmers and beet growers, containing insinuating statements to the effect that such competing companies were unreliable and financially irresponsible, and suggesting that farmers could safely contract for growing beets only with corporate respondents.

(l) On or about February 25, 1920, respondent, Utah-Idaho Sugar Company purchased advertising space in several weekly and daily newspapers circulating in Utah and Idaho where competing independent enterprises and factories were operating and advised the publishers of said newspapers that it was planning to extend its advertising activities and would choose, as a medium, the paper friendly and loyal to its, said respondent's, organization, thus seeking to influence by the use of great wealth the editorial policies of said newspapers to be in favor of corporate respondents as against competitors in regard to the beet sugar industry.

Respondents at all times mentioned hereinbefore and in the record of this proceeding, and up to the time when the taking of testimony ceased, were continuing to carry out the purposes of the secret agreement, combination and conspiracy hereinbefore set out by means of acts, practices and conduct of a nature similar to the acts and things done to carry out said conspiracy hereinbefore set out, and said acts and things done, had and have the effect of obstructing, hindering, suppressing and eliminating competition in the purchase of sugar

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beets and the manufacture and sale of beet sugar in interstate commerce, and especially in the States of Utah, Idaho, Oregon, Washington and Nevada.

#### CONCLUSION.

The acts and things done by respondents as hereinbefore set out under the conditions and in the circumstances described in the foregoing findings, constitute unfair methods of competition in violation of the provisions of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### 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 (E. F. Cullen not having appeared or answered), 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, 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 respondents, Utah-Idaho Sugar Company and the Amalgamated Sugar Company, each of them and their officers, agents and employees and E. R. Wooley and A. P. Cooper, shall forever cease and desist from conspiring or combining between and among themselves to maintain or retain the monopoly of corporation respondents hereinbefore set out; to prevent the establishment of beet sugar enterprises and the building of sugar factories by persons or interests other than said corporation respondents, and to hinder, forestall, obstruct or prevent competitors or prospective competitors from engaging in the purchase of sugar beets, and in the manufacture and sale of refined beet sugar in interstate commerce, and from effectuating or attempting to effectuate such conspiracy and combination;

(1) By respondent corporations allocating to themselves certain territory and establishing interstate territorial divisions lines to be observed by and between themselves in the obtaining of sugar beets and the building of beet sugar factories for the purpose of unlawfully protecting the said respondent corporations against competitors who may endeavor to come into such allocated territory for the purpose of obtaining sugar beets and for the purpose of building factories for the manufacture of beet sugar.

(2) By intimidation, untruthful statements or otherwise, preventing, hindering or attempting to prevent or hinder the Dyer

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Company, a corporation of Cleveland, Ohio, a manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States or any other such manufacturer, from engaging in interstate commerce in selling, building and equipping beet sugar factories for competitors or prospective competitors who are engaged or who are about to engage in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

(3) By using their financial power and influence so as to cause banks and others to refuse credit to and to discourage competitors and prospective competitors from engaging in the purchase of sugar beets and the manufacture and sale of refined beet sugar, in interstate commerce.

(4) By using their financial power and influence to purchase land and erect factories in the territory where competitors or prospective competitors intend or shall undertake to start in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce, when such purchases or erections are not done in good faith and for no other purpose than to forestall, obstruct and prevent competitors and prospective competitors from engaging in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce.

(5) By inducing beet growers to break or cancel contracts for the production of sugar beets for competitors or prospective competitors, by promises to build sugar factories when said respondent corporations have no intention of constructing same but make such promise solely for the purpose of causing breach of contracts for said production in order thereby to prevent or hamper the building of prospective competing factories or the operation of existing competing factories.

(6) By circulating and publishing false, misleading and unfair statements concerning the machinery and equipment of competitors or prospective competitors factories, or the fitness of such machinery to successfully manufacture refined beet sugar.

(7) By circulating and publishing false, misleading and unfair statements concerning the (a) ability of competitors or prospective competitors to get and pay for beet seed; (b) adaptability to raising sugar beets of land or territory in the localities where competitors are located or are intending to locate; (c) ability of competitors or prospective competitors to pay producers or growers for sugar beets contracted for or delivered to them.

(8) By making untruthful and unjustifiable statements against competitors or prospective competitors to induce, persuade and influence United States Government departments and agents, for the

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purpose of causing said Governmental departments or agents to use their power and authority to prevent the building of factories for the manufacture and sale in interstate commerce of refined beet sugar by competitors or prospective competitors.

(9) By offering to advertise in newspapers circulating in the localities of the States of Utah, Idaho, Oregon and Montana or elsewhere, where competitors operate or prospective competitors intend to build and operate beet sugar factories, with the understanding that editorial policies shall be in favor of corporation respondents as against competitors in regard to the beet sugar industry.

(10) By inducing beet growers or others, through false, unfair and misleading statements, to withdraw their support from, and to breach contracts for the growing of sugar beets with, competitors and prospective competitors in the manufacture and sale in interstate commerce of refined beet sugar, thereby depriving said competitors of, or hampering them in, the ability to compete with corporation respondents.

(11) By circulating and publishing false, misleading and unfair statements concerning the financial standing and responsibility of competitors or prospective competitors for the purpose of preventing or hampering the sale or disposition of the stocks, bonds and promissory notes of such competitors, or of otherwise causing said competitors financial embarrassment.

(12) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of inciting financial trouble and embarrassment to competitors or prospective competitors by purchasing or acquiring secretly the whole or a controlling interest in the business of competitors or prospective competitors who are engaged, or who intend to engage, in the manufacture and sale of refined beet sugar in interstate commerce.

(13) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of annoying, harassing and eliminating competitors and prospective competitors by instituting unjustifiable and groundless litigation and law suits.

(14) By circulating false, misleading and unfair statements in writing or orally concerning the honesty, integrity or ability of the promoters, officers or employees of competitors or prospective competitors engaged in or about to engage in the purchase of sugar beets and the manufacture and sale in interstate commerce of refined beet sugar.

(15) By utilizing any other equivalent means not hereinbefore stated of accomplishing the object of unfairly preventing, forestalling, stifling or hampering the business of competitors and of those about to compete with corporation respondents in the purchase of

Dissent.

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sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

No service of the complaint having been made upon the respondent, E. F. Cullen, *it is further ordered* that the complaint herein be, and the same is hereby, dismissed as to the said respondent, E. F. Cullen.

By the Commission, Commissioners Van Fleet and Gaskill, dissenting. Memorandum dissent by Commissioner Van Fleet attached.

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*Dissent by Commissioner Van Fleet.*

In this case the respondents are engaged in the manufacture and sale of beet sugar. The sugar is sold in interstate commerce. The manufacture is intrastate. This proceeding is based on Section 5 of the Federal Trade Commission Act which declares unlawful unfair methods of competition in commerce. The fact that respondents are engaged in commerce in selling sugar produced has no bearing on the case for the reason that the proof does not show any acts of unfair competition in such product. The fact that a respondent is engaged in commerce is not material unless the acts charged have to do with such commerce or that of its competitors in such commerce. The acts to which the proof is directed are concerning only the manufacture. The manufacture of sugar from beets is somewhat peculiar in that it is necessary to have the factory located where beets may readily be obtained by short haul. It is not profitable to ship the beets a great distance to the factory. The acts to which the proof is directed consisted in the effort of respondents to prevent competing factories being located in contiguous territory where they might absorb a part of the supply of beets to respondents' factories. It was at most a prevention of competition in the purchase of the raw material for manufacture within the state, and, in no case does the proof show an interference with the transport of beets from one state to another, or an interference with the purchase thereof.

It is well settled that production and manufacture is not commerce. *Coe v. Errol*, 116 U. S. 517; *Kidd v. Pearson*, 128 U. S. 1; *United States v. E. C. Knight Co.*, 156 U. S. 1; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238; *McCluskey v. Marysville & Northern Ry. Co.*, 243 U. S. 251; *Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co.*, 249 U. S. 134; *The Coronado Case*, 259 U. S. 344; *Hammer v. Dagenhart*, 247 U. S. 251.

The fact that an article in process of manufacture is intended for export to another state does not render it an article of inter-

state commerce. *Crescent Oil Company v. Mississippi*, 257 U. S. 129. But it is contended in support of the jurisdiction of the Commission that such interference with the source of supply of respondent's competitors affects the ability of such competitors to produce sugar to be sold in interstate commerce and that such acts are thus an interference with such commerce. This theory is based on those cases holding that intrastate acts which directly interfere with a current of commerce may be controlled by Congress. *Swift v. U. S.*, 196 U. S. 375; *United States v. Patten*, 226 U. S. 525; *United States v. Ferger*, 250 U. S. 199; *Stafford v. Wallace*, 258 U. S. 495; *Board of Trade of the City of Chicago v. Olsen, et al*, U. S. Sup. Apr. 16, 1923. [262 U. S. 1.]

There is no conflict between the cases holding that production and manufacture are not commerce and the doctrine laid down in the *Swift* and following cases. In the first case there is no interstate commerce unless the acts themselves are such. In the second case there *already is* interstate commerce which is being affected or obstructed by the intrastate acts. Confusion may arise if the intrastate acts regulated under the doctrine in the *Swift* case be compared with intrastate acts where there is not already commerce.

Purely intrastate acts may or may not come under the Federal jurisdiction depending on whether they affect *existing* interstate commerce. The *same acts* thus may or may not be subject to such jurisdiction. This is well illustrated in the two cases of *Hill v. Wallace*, 42 Sup. Ct. Rep. 453 [259 U. S. 44]; *Board of Trade of the City of Chicago v. Olsen, et al*, U. S. Sup. Apr. 16, 1923 [262 U. S. 1]. When such acts are subject to such jurisdiction it is not because they are commerce, but because they affect or obstruct it.

In the present case there is no commerce to obstruct until the beets are manufactured into sugar and such sugar has been placed in transport. The argument is however, as stated above, that the acts here cut off at the source such commerce. It is only such acts as *directly* interfere with commerce which come under the Federal jurisdiction. The line must be drawn somewhere, else all jurisdiction in trade or production would become Federal. Hence Congress has not jurisdiction of such acts as only indirectly or remotely affect commerce. In the instant case if interference with the production and manufacture into sugar of beets is an obstruction to a later or unborn commerce in sugar to be made from the beets, one who intrastate sold defective beet seed, thus preventing the production of beets to be manufactured into sugar, would be in commerce. Or one who sold fertilizer to raise the seed to plant the beets to make the sugar to be shipped in commerce would be in commerce.

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FEDERAL TRADE COMMISSION

*v.*

M. KAPLAN, TRADING AS THE BUTTERFLY SHOP.