

FEDERAL TRADE COMMISSION DECISIONS.

FINDINGS AND ORDERS NOVEMBER 5, 1923, TO JULY 20, 1924.

FEDERAL TRADE COMMISSION

v.

ST. LOUIS WHOLESALE GROCERS' ASSOCIATION ET AL.

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

Docket 893—November 5, 1923.

SYLLABUS.

Where an association, which included in its membership a large majority of the wholesale grocers located and doing business in a certain city, and the officers and members thereof; in a concerted effort (1) to coerce manufacturers who did not guarantee the products which they sold against decline into adopting such a policy, under penalty of losing a major part of their business in that market, (2) to promote the business of competing manufacturers who gave such guarantees, and (3) to destroy the competitive advantages of jobbers who purchased nonguaranteed goods on a decline over jobbers with large unsold stocks,

- (a) Reported to the association the names of manufacturers who did not guarantee against a decline in the prices of their commodities;
- (b) Caused the names of such manufacturers to be published and distributed in bulletins and letters coupled with suggestions as to the advisability of confining purchases to manufacturers who guaranteed prices of their commodities against decline;
- (c) Solicited the names of and information concerning manufacturers who did and those who did not give such guarantees and caused the same to be published and distributed among the members of the association and others in bulletins and letters, together with statements setting forth the advisability of confining purchases to those manufacturers who followed the practice in question, and with comments denouncing and depreciating those who did not do so; and
- (d) Boycotted and threatened with boycott or loss of patronage manufacturers and their agents or representatives who did not guarantee the prices of their commodities;

With the result that general and pronounced opposition and antagonism to the sale of goods not so guaranteed were experienced, sales declined heavily, and the retail trade was unable for a time to secure goods from said members:

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

Mr. Walter B. Wooden and *Mr. John H. Bass* for the Commission.
Mr. M. N. Sale, of *Sale & Frey* of St. Louis, Mo., for respondents.
7 F. T. C.

Complaint.

7 F. T. C.

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 the St. Louis Wholesale Grocers' Association, its Officers and Members, including the various individuals, partnerships and corporations named in the caption hereof, 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, St. Louis Wholesale Grocers' Association, is a voluntary unincorporated trade association composed of wholesale dealers and jobbers of groceries and food products having their places of business in the State of Missouri. The object of said Association is to promote and protect the common interests of its said members, and the regulation of so-called trade abuses. Respondents, A. E. Gilster, P. G. Scudder, W. J. Buchanan and Walter J. Tancill, and their respective successors, were at all times hereinafter mentioned and still are Officers of said Association administering its affairs; Goddard Grocery Company, Goebel-Reid Grocery Company, Pioneer Grocery Company, Adam Roth Grocery Company, Landau Grocery Company, Niehoff Grocery Company, Gildehaus-Wulfig & Company, The Amos-James Grocery Company, Meyer-Schmid Grocery Company, Niess Grocery Company, Wulfig Grocery Company, Buchanan Grocery Company, Krekeler Grocery Company, S. D. Rossi Grocery Company, A. Moll Grocery Company, Haas-Lieber Grocery Company, The Coast Products Company, N. Comensky Grocery Company, L. Cohen Grocery Company, Louis Maull Company, The Scudders-Gale Grocery Company, Krenning-Schlapp Grocery Company, Lowell-Krekeler Grocery Company, August Nasse & Sons, G. H. Wetterau & Sons Grocery Company, J. M. Anderson Grocery Company, Tibbitts-Hewitt Grocery Company, were at all times hereinafter mentioned and now are corporations organized and existing under the laws of the State of Missouri and Members of said Association. From time to time the membership of said Association is increased by the addition of new members so that all the members of said Association at any given point of time cannot be specifically named as respondents herein without manifest inconvenience and delay, wherefore, the Officers hereinbefore named as Respondents as such officers, are also made Respondents as representing all members of said Association including those not herein specifically named. The various members of said Association purchase groceries and food

1

Complaint.

products in several States of the United States other than the State of Missouri, and cause said commodities to be transported from the States wherein the same are purchased to their respective places of business in the State of Missouri, and thereafter sell said commodities and cause the same to be transported from their respective places of business to purchasers at points in the State of Missouri and other States of the United States, and there has been continuously for a period of more than two years last past and still is a constant current of trade and commerce in the products dealt in by the various Members of Respondent Association between various States of the United States. In the course and conduct of their said businesses, Respondent Members of said Association are in competition with each other and with other individuals, partnerships and corporations engaged in the wholesaling of similar commodities, and with the trade generally.

PAR. 2. About the beginning of the Year 1921, Respondent Association acting on behalf of its said Members and in co-operation with them, adopted and has since carried out a policy and plan of coercing and attempting to coerce, manufacturers from whom the Members of said Association purchased the commodities in which they deal, into guaranteeing and assuring said Members that in the event of a reduction in the prices charged said Members by said Manufacturers for their products, each such Member holding in stock at the time of such reduction any of said commodities purchased prior to the time of said reduction, will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by the Member in each instance for said products actually on hand and unsold and said reduced prices thereof. In the carrying out of said plan Respondent Association and its Officers and Members co-operating together, have, since the adoption of said plan, continuously done and still do the following acts and things:

(a) The Members, respectively, report to the Association the names of all manufacturers who so guarantee in the sales of their products to Members, and the names of other manufacturers who so guarantee generally which come to the notice of the Members;

(b) The Association compiles a list of such guaranteeing manufacturers whose names have been secured by it as set out in Specification (a), and by other means, together with favorable comments relative to such manufacturers, and inserts the same in circular letters and bulletins issued by it, a copy of which it forwards to each Member of the Association for the information and use of the members in making purchases of the commodities in which they deal;

Complaint.

7 F. T. C.

(c) The Association solicits from its Members, and the Members report to the Association, the names of manufacturers, especially of manufacturers of nationally advertised articles, who do not so guarantee. The Association lists said names in its said letters and bulletins, together with comments denunciatory or depreciatory of the manufacturers thus listed, a copy of which it forwards to each Member of the Association for the information and use of the Members in making purchases of the commodities in which they deal;

(d) The Association exchanges its aforesaid lists with other similar associations for their similar lists, and forwards the lists received from such other associations to the Members of Respondent Association for their use in making purchases of the commodities in which they deal;

(e) The Association by means of letters, personal interviews and by other ways urges, and seeks by intimidation, to coerce various manufacturers who do not so guarantee, into adopting said practice and notifies the Members to co-operate with the Association in that regard by individually bringing similar pressure to bear upon said manufacturers;

(f) Said Members upon receiving the information and suggestions contained in the preceding Specifications bring similar pressure to bear upon said manufacturers who do not so guarantee to cause them to adopt said practice;

(g) The success or failure of the coercive efforts set out in Specifications (e) and (f) is so notified by the Association to its Members and vice versa;

(h) The names of the manufacturers who adopt said practice either voluntarily or by reason of the pressure brought to bear upon them, as above set out, are inserted in letters and bulletins thereafter issued to be added to the list of names of guaranteeing manufacturers and copies of said letters and bulletins are sent by the Association to its Members from time to time;

(i) In making current purchases of the products in which they deal, the Members use the lists and information received and acquired through the foregoing means and wherever possible make said purchases from the manufacturers so guaranteeing in preference to the manufacturers who do not, or who refuse to, so guarantee.

(j) Use other equivalent cooperative means to carry out said plan.

PAR. 3. The acts and things done by Respondent Association, its Officers and Members cooperating together, as above set out, tended

Findings.

and still tend to restrict, diminish and obstruct the sales and business of manufacturers of food products who do not guarantee as above set out, to the advantage of competing manufacturers of similar products who do so guarantee, and whose names appear in aforesaid lists, circular letters and bulletins, and unduly to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 4. The above alleged acts and things done by Respondents and by each of them are all to the prejudice of the public and 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 its complaint upon the respondents herein, charging them with unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearances by their attorneys, Sale & Frey, and respondents having duly filed their answers, admitting certain allegations of said complaint and denying others, and setting up certain new matter in defense, and hearing having been held before an Examiner of the Commission, theretofore duly appointed, and the Commission having offered evidence in support of the said charges of the complaint, and said respondents having offered evidence in their defense, which evidence was recorded, duly certified, and duly transmitted to the Commission; and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received, as heretofore set out, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. (a) The respondent, the St. Louis Wholesale Grocers' Association, of St. Louis, Mo., is a voluntary, unincorporated association, hereinafter referred to as respondent association. The object of said association is to promote and protect the common interests of its members and the regulation of so-called trade abuses; the respondent association has been in existence at least since June, 1919. In 1919, its secretary was Hugh H. Mace, who in August, 1921, was succeeded by the respondent Walter J. Tancill, the present

Findings.

7 F. T. C.

secretary. The Association's first president was respondent A. E. Gilster, who was succeeded in February, 1921, by F. M. Canter. Mr. F. M. Canter was succeeded on February 7, 1922, by respondent A. E. Gilster;

(b) At the time of filing complaint, the membership of said respondent association comprised the great majority of all the wholesale grocers located and doing business at St. Louis and consisted of the following firms and corporations:

Goddard Grocery Co.	A. Moll Grocery Co.
Goebel-Reid Grocery Co.	Haas-Lieber Grocery Co.
Pioneer Grocery Co.	The Coast Products Co. .
Adam Roth Grocery Co.	N. Comensky Grocery Co.
Landau Grocery Co.	L. Cohen Grocery Co.
Niehoff Grocery Co.	Louis Maull Company.
Gildehaus-Wulffing & Co.	The Scudders-Gale Grocery Co.
The Amos-James Grocery Co.	Krenning-Schlapp Grocery Co.
Meyer-Schmid Grocery Co.	Lowell-Krekeler Grocery Co.
Niese Grocery Co.	August Nasse & Sons.
Wulffing Grocery Co.	G. H. Wetterau & Sons Grocery Co.
Buchanan Grocery Co.	J. M. Anderson Grocery Co.
Krekeler Grocery Co.	Tibbitts-Hewitt Grocery Co.
S. D. Rossi Grocery Co.	

All of the said members are located in the city of St. Louis and purchase groceries and food products in several states of the United States other than the State of Missouri, and cause said commodities to be transported from the states wherein the same are purchased to their respective places of business in the state of Missouri, and thereafter sell said commodities and cause the same to be transported from their respective places of business to purchasers at points in the state of Missouri and other states of the United States, and there has been continuously for a period of more than three years past, and still is, a constant current of trade and commerce in the products dealt in by the various members of said respondent association between various states of the United States. In the course and conduct of their said businesses, respondent members of said respondent association are in competition with each other and with other individuals, partnerships and corporations engaged in the wholesaling of similar commodities and with the trade generally.

(c) Since the filing of the complaint the respondents Pioneer Grocery Co., L. Cohen Grocery Company, J. M. Anderson Grocery Co., Coast Products Co., and A. Moll Grocery Co. have withdrawn their membership in the respondent association although at the time

1

Findings.

of hearing they were still in existence. Respondent J. M. Anderson Grocery Co. is no longer functioning as a firm, but is in fact out of business.¹

The St. Louis Wholesale Grocery Co., not named in the complaint, a Missouri corporation engaged in a similar line of business as respondents named in paragraph one, section (b), was a member of the St. Louis Wholesale Grocers' Association in the years 1920 and 1921, but has since ceased to function as a corporation and no longer is in business.

(d) From time to time the membership of the respondent association has been and is increased by the addition of new members so that all the members of the said respondent association at any given point of time could not be specifically named as respondents in the complaint without manifest inconvenience and delay, therefore, the officers hereinafter named as respondents, to wit: A. E. Gilster, its president, P. G. Scudder, its vice president, W. J. Buchanan, its treasurer, and Walter J. Tancill, its secretary, and their successors, as such officers were also made respondents as representing all members of said respondent association, including those not specifically named in the complaint.

At the present time two new firms are members of the respondent association, to wit: Consumers Grocery Co. and Hassendeubel Co.

PAR. 2. In the fall of 1920 and the spring of 1921 the sale of food products, including those nationally advertised, was sharply reduced owing to the collapse of consumptive demand. This left the wholesalers, including members of respondent association, with large stocks of goods on hand for which there was no immediate market, and for which they had paid more than the current or replacement cost. The majority of manufacturers of nationally advertised food products guarantee the price of their products against their own decline, meaning by this that in the event of the manufacturer lowering his own selling price he will allow the jobber a rebate or credit allowance on the jobber's unsold stocks equivalent to the difference between the price paid by the jobber and the reduced price put into effect by the manufacturer. The period and terms of this guarantee have varied among the different manufacturers and different com-

¹ Complaint dismissed as to this respondent by the following order of even date:

This proceeding having come on for hearing before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial Examiner's report upon the facts, and the exceptions thereto, and it appearing to the Commission that the respondent, J. M. Anderson Grocery Company, since the issuing of the complaint herein, has ceased to function as a going concern and is, in fact, out of business, and the Commission being fully advised in the premises, It is ordered, That the complaint herein be, and the same is hereby, dismissed as against respondent J. M. Anderson Grocery Company, for the reason that said respondent is no longer functioning as a going concern, but is, in fact, out of business.

Findings.

7 F. T. C.

modities. Other manufacturers of nationally advertised food products do not guarantee their products against their own decline. The practice of guaranteeing against decline by manufacturers is looked upon with favor by the majority of jobbers. One of the effects of a guarantee against decline is to offset or nullify the competitive disadvantage which a jobber with heavy unsold stocks suffers as against jobbers who purchase stocks following a decline in the manufacturer's price.

PAR. 3. The conditions described in the preceding paragraph brought about an effort on the part of the members of respondent association to cooperate with each other in the disposition of surplus stocks by purchasing such items as were in surplus from each other instead of from the manufacturer. This led in the course of a few months to the formation within the St. Louis Wholesale Grocers' Association of an informal organization composed of the buyers for the respective respondent members. This organization was known generally as the Buyers' Conference and its chief purpose was to facilitate cooperative purchasing from manufacturers and the cooperative handling between the members of their surplus stocks. It became an active and prominent part of the association in August, 1921. In February, 1922, the chairman of the Conference and association officials credited it with having "created a wonderful spirit of cooperation amongst the jobbers." The Buyers' Conference was discussed at meetings of the Board of Directors of respondent association and attendance at the Conference meetings was urged upon the members of the association by officers of the latter.

PAR. 4. Among the items of which respondents had a surplus stock during the latter part of 1920 were Jell-O, manufactured by the Genesee Pure Food Co. of Leroy, N. Y., and the cocoa and chocolate products of W. H. Baker, Inc., of Winchester, Va. When the manufacturers' prices of various food products declined in the fall of 1920 the secretary of respondent association was instructed by the Board of Directors of said association to write a letter to the Genesee Pure Food Co. "protesting their lack of guarantee against decline." This occurred before any decline in the price of Jell-O had been announced by the manufacturer. At this same meeting the secretary was instructed to write to a certain manufacturer's representative "explaining the appreciation of the St. Louis Wholesale Grocers' Association and its members for the definite and determined stand" which his house had taken with reference to guarantee against decline.

PAR. 5. About this time a member of respondent association informed the St. Louis representative of W. H. Baker, Inc., that the

Findings.

failure of his company to guarantee against decline had been discussed at the weekly meeting of wholesale grocers and that unless his company protected the jobbers against decline to the same extent as competitive manufacturers, the jobbers of St. Louis would no longer cooperate with his company. About this same time various members of respondent association wrote letters to the Genesee Pure Food Co. and the St. Louis representative of W. H. Baker, Inc. stating that because of the manufacturers' refusal to guarantee against decline they would have to discontinue handling their respective goods. Despite their knowledge that neither the Genesee Pure Food Co. nor W. H. Baker, Inc. guaranteed their products against decline various members of respondent association submitted formal claims for reimbursement covering declines on their unsold stocks of these two manufacturers' goods and made strong representations that such claims should be allowed.

PAR. 6. In a bulletin issued to respondent members under date of January 13, 1921, the secretary of respondent association reproduced a letter from the Genesee Pure Food Co. in reply to the Secretary's letter of December 20, 1920, stating that the policy of the company was not to guarantee against decline. This letter was reproduced side by side with a letter from Charles B. Knox Gelatine Co., a competitor of the Genesee Pure Food Co., in which the former announced a policy of guaranteeing against decline. The secretary followed these letters with this comment:

We are merely sending this to show you the absolute contrast and fairness with which other concerns in the Gelatine line have acted, compared with that of the Genesee Pure Food Company, manufacturer's of Jell-O.

We want to show you furthermore, that other large concerns, due to the fact that they are large, do not try to gouge the Wholesale Grocer out of his slim profit which he does make on the goods handled, but they come back and give us an absolute protection against decline, and also give us protection when their goods advance.

The Jobber should show concerns of this kind great consideration. As a matter of fact they should also give the Jiffy-Jell people (who have been kind enough to protect every dollar's worth of floor stock) 100% cooperation.

PAR. 7. In a bulletin issued to his members on January 15, 1921, the secretary of respondent association reproduced a list of manufacturers who guaranteed their products against decline, said list having been received from the Wisconsin Wholesale Grocers' Association. In this bulletin the secretary of respondent association requested his members to furnish him with lists of manufacturers

Findings.

7 F. T. C.

who guaranteed their products against decline and also lists of those who did not so guarantee, stating that these lists were desired "so that your organization may work for a guarantee on those commodities which are not now guaranteed." In a bulletin to respondent members dated January 22, 1921 the secretary, in referring to his previous request for lists of articles not guaranteed against decline stated he had received "only a few replies, and before starting on our work we would like to have a list of as many products not guaranteed against decline as you know of." Pursuant to the request of the secretary in this bulletin various members of respondent association reported to the secretary the names of manufacturers who guaranteed against decline and those who did not do so. The secretary wrote to various manufacturers inquiring as to their policy with regard to guarantee against decline and bulletined the replies received to his members.

PAR. 8. In a bulletin to respondent members dated February 21, 1921, the secretary suggested that the members communicate with manufacturers who did not guarantee against decline and ask them to establish such a guarantee. In a bulletin to respondent members dated February 22, 1921, the secretary gave the members a complete list of concerns guaranteeing against decline and asked them to report any omission or error. The secretary expressed his indebtedness to the secretary of another wholesale grocers' association for a great part of this list. A member of respondent association informed the secretary of an error in the bulletin of February 22, 1921 as to the guarantee policy of W. H. Baker, Inc., whereupon the secretary verified the member's report by correspondence with said manufacturer and corrected the bulletin by circularizing the membership.

PAR. 9. At the annual meeting of the association in February, 1921, the president appointed a committee on the Buyers Conference for the coming year. At a meeting of the Board of Directors on March 28, 1921 a report was made on surplus stock lists. At this last meeting a resolution was adopted declaring it to be the sense of the St. Louis Wholesale Grocers' Association that manufacturers should not put on free deals or free goods campaigns, "unless the entire stock was protected on the free deal basis." The meeting also decided to send a copy of this resolution to all manufacturers who had free deals in force which the wholesale grocer objected to.

PAR. 10. The respondent association has been accustomed to exchange its bulletins and circulars with wholesale grocer associations in other parts of the United States. While it has received from such other associations bulletins showing that these organizations were also interested in the subject of securing guarantees against decline from manufacturers, there is no evidence that the respondent association

distributed to the other associations the particular bulletins of respondent association herein described. It was respondent secretary's custom, however, to send many of his bulletins to the secretaries of other wholesale grocer associations.

PAR. 11. During the period beginning in the fall of 1920 and continuing till the fall of 1921 the respondent members were discussing with each other the guarantee policy of various manufacturers. During this same period many of respondent members refused to purchase the goods of the Genesee Pure Food Co. and W. H. Baker, Inc. and notified the representatives of said manufacturers that their refusal to guarantee against decline was the reason for said refusal to purchase. During this same period members of respondent association informed the representative of W. H. Baker, Inc. that the policy of his house with reference to guarantee against decline had been unfavorably discussed at meetings of the St. Louis jobbers and that his house was "in bad" with the St. Louis jobbers because of its policy. The representative of W. H. Baker, Inc. was informed by one member of respondent association that his fate would be similar to that of the Genesee Pure Food Co. which had refused to guarantee against decline as demanded by the St. Louis Wholesale Grocers' Association and as a consequence its goods were absolutely out of the St. Louis market.

PAR. 12. In August, 1921, a member of the Buyers' Conference of the St. Louis Wholesale Grocers' Association informed the sales representative of W. H. Baker, Inc., that the Conference had decided to purchase only advertised brands which were guaranteed against decline; that unless W. H. Baker, Inc., established such a guarantee it would be quietly dropped and that it was the sense of a recent meeting of St. Louis jobbers that they should handle only advertised brands on which there was a guarantee against decline. Shortly thereafter the representative of this manufacturer experienced general and pronounced opposition and antagonism in endeavoring to sell goods to members of respondent association. He reported to his house that "every call is a battle now and the few orders I have secured each order is evidence of a strenuous battle and argument and the majority of the few I have won over is through personal friendship."

PAR. 13. Early in September, 1921, a committee representing the St. Louis buyers called in the representative of W. H. Baker, Inc., and called his attention to the fact that whereas he had formerly handled 75% of all the cocoa and chocolate business of St. Louis he was then a poor third. In this connection the committee endeavored to secure an unlimited guarantee against decline from

Findings.

7 F. T. C.

W. H. Baker, Inc., by citing to its representative the policy of a competing manufacturer. The stock of W. H. Baker, Inc., products in the hands of St. Louis jobbers during 1921 was being traded and exchanged through the operations of the Buyers Conference at the same time that Baker's representative was unable to secure business and large orders were being placed with Baker's competitors.

PAR. 14. In April, 1921, a member of respondent association informed the St. Louis representative of the Genesee Pure Food Co. that at a meeting of the St. Louis Wholesale Grocers' Association a roll call was held to ascertain which members were handling Jell-O and that none of the members were found to be handling it. Shortly after the Genesee representative informed this member that a certain other member was handling Jell-O the latter ceased buying that product. In or about April, 1921, a member of respondent association issued a bulletin to its salesmen urging them to sell Jiffy-Jell, a product competing with Jell-O. At this time respondent members were pushing the sale of Jiffy-Jell while various retail grocers in St. Louis were unable to secure Jell-O from the St. Louis jobbers from whom they had previously purchased it, and with whom they were accustomed to deal. In or about June, 1921, the stocks of Jell-O in the hands of respondent jobbers became depleted and Jell-O was in demand by retailers and consumers. Thereupon one of respondent members who had been most active in the opposition to Jell-O placed an order direct with the Genesee Pure Food Co. representative and thereafter a number of respondent jobbers resumed the buying of Jell-O, although some continued to refuse to purchase it and criticized the concerns which had resumed purchasing it. During the period when many of respondent members were refusing to buy Jell-O direct from the manufacturer some of them secured their supplies of this article from other respondent jobbers through the exchange of surplus stock lists and as a part of the operations of the Buyers Conference above described.

PAR. 15. Under the circumstances set out in the foregoing paragraphs the acts, representations, methods and practices of respondent association, its officers and members, as also set out therein, constituted a concerted effort and attempt on the part of respondents to coerce manufacturers who did not guarantee against decline to establish such a guarantee under penalty of losing all or a major part of their business in the St. Louis market by reason of the fact that respondent association included practically all the jobbers in that market, and to promote correspondingly the business of competing manufacturers who did guarantee against decline. Said acts, representations, methods, and practices also constituted a con-

1

Order.

certed effort and attempt on the part of respondents to destroy the competitive advantages which jobbers purchasing non-guaranteed goods on a decline had over jobbers with large unsold stocks of the same goods.

PAR. 16. Declines in the price of manufactured food products ceased to be an important factor in the wholesale markets by the close of 1921 and thus for the time being the occasion passed for further concerted action by respondents with reference to the subject of guarantee against decline.

CONCLUSION.

That the practices of the respondents, as set forth in the foregoing Findings as to the Facts are in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel, oral argument having been waived by respondents' counsel, and the Commission having made its Findings as to the Facts and having reached its conclusion that the respondents have violated the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondents, and each of them, their officers, directors, representatives, agents, and employees cease and desist from cooperating among themselves or with others directly or indirectly, to induce, influence, or coerce, and from inducing, influencing, or coercing by cooperative methods, manufacturers from whom they purchase the goods and commodities in which they deal, into guaranteeing and assuring them that in the event of a reduction in the prices charged them by said manufacturers for such commodities each such respondent holding in stock at the time of such a reduction any of said commodities purchased prior to the time of such reduction will receive from said manufacturers, respectively, a rebate or credit allowance equivalent to the difference between the price paid by him in each instance for said commodities actually on hand and unsold and said reduced prices thereof;

Order.

7 F. T. C.

(1) By the practice of reporting to respondent association the names of manufacturers who do not so guarantee the prices of their commodities against decline.

(2) By causing the names of manufacturers thus reported, who do not so guarantee the prices of their commodities against decline, to be enrolled upon a list and such list inserted and published in bulletins and letters issued and distributed by respondent association, together with information emphasizing the advisability of confining their purchases to manufacturers who guarantee the price of their commodities against decline.

(3) By the practice of soliciting the names of and information concerning manufacturers who do and those who do not guarantee the prices of their commodities against decline, and causing such names and information to be published and distributed among the members of respondent association and others by means of bulletins and letters containing such names together with information and statements setting forth the advisability of making purchases from those manufacturers who guarantee the price of their commodities against decline and the inadvisability of purchasing from manufacturers of competitive commodities who do not so guarantee the prices thereof against decline, and comments denunciatory and depreciatory of such manufacturers who do not so guarantee against decline.

(4) By boycotting, or threatening to boycott, or threatening with loss of patronage or custom any manufacturer, or his agent or representative, who does not guarantee the prices of commodities sold by him against decline.

(5) By utilizing any other equivalent cooperative means of obtaining from manufacturers guarantees or assurances against decline in the price of their commodities.

It is further ordered, That the respondent shall file with the Federal Trade Commission, within 60 days from date of this order, its report in writing stating the manner and form in which this order has been conformed to.

AABAN RADIUM CO.

15

Complaint.

FEDERAL TRADE COMMISSION

v.

ABBOTT E. KAY AND R. T. NELSON, AS INDIVIDUALS
AND AS CO-PARTNERS, DOING BUSINESS UNDER THE
NAME OF AABAN RADIUM COMPANY.