

Syllabus.

FEDERAL TRADE COMMISSION

v.

P. LORILLARD COMPANY, INC., THE CINCINNATI
WHOLESALE TOBACCO 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 909—February 20, 1924.

SYLLABUS.

Where the tobacco wholesalers in a certain locality, at the instigation, and in response to the advice and coercion, and with the cooperation, of one of the largest tobacco manufacturers, without a continual supply of which manufacturer's products, dealt in by them, it was difficult, because of the demand therefor, for a tobacco dealer successfully to conduct his business;

- (a) Agreed upon the discount from list prices to be observed and maintained by them in selling the products of said manufacturer, and, through an association which they organized, upon discounts from list prices on tobacco products, to be accorded by them to subjobbers and retail dealers, and agreed not to allow a discount greater than an agreed figure to price cutting subjobbers or those of their own number, who had been discontinued as direct customers by a manufacturer, for price cutting; and generally maintained the discounts so agreed upon; and
- (b) Struck from a list of subjobbers theretofore adopted by them as comprising those entitled to the regular subjobber discounts which they had agreed upon, the name of certain subjobbers to whom they thereafter allowed only the smaller discount as above set forth; and

Where a tobacco manufacturer, as aforesaid, in harmony with its efforts to secure general observances throughout the country of what it regarded as satisfactory resale prices on its products,

- (c) Promised, and lent its assistance and cooperation in the foregoing undertaking through circular letters defending and advocating such a plan and through threatening to cut off, and cutting off, price cutters, and jobbers who would not cooperate with its other customers in said undertaking;

With the result that wholesale dealers in the territory concerned were constrained to observe prices fixed as above set forth, and competition in the wholesaling of tobacco products, and between subjobbers and retailers, in such territory, was suppressed and hindered, and with a tendency thereby to obstruct the free and natural flow of commerce:

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

Mr. Edward L. Smith and *Mr. Edwin B. Haas* for the Commission.

Mr. W. B. Bell and *Mr. Charles Caldwell* of New York City and *Mr. H. H. Shelton* of Washington, D. C., for P. Lorillard Co., Inc.

Mr. Alfred G. Allen of Cincinnati, Ohio and *Mr. Charles S. Moore* of Taylor, Caskey & Moore of Washington, D. C., for

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respondent wholesalers (with the exception of Janzen Grocery Co., and its officers).

Dorger & Dorger of Cincinnati, Ohio, for Janzen Grocery Co., and the officers thereof.

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 various persons, corporate and individual, mentioned in the caption hereof and more particularly hereinafter described and 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. The respondent, P. Lorillard Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Jersey City, in said State, and with various factories, some located in the State of New Jersey, aforesaid, and others in different other States of the United States; it was at all times hereinafter mentioned, and still is, engaged in the business of manufacturing cigars, cigarettes and other tobacco products and in selling the same throughout the United States, causing its products, when so sold, to be transported from the point of manufacture in one State to purchasers located in other States of the United States, the Territories thereof and the District of Columbia, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said cigars, cigarettes and other tobacco products manufactured by said respondent, between and among the various States and Territories of the United States and the District of Columbia; the said respondent is now, and was at all times hereinafter mentioned, one of the largest manufacturers and sellers of cigars, cigarettes and other tobacco products in the United States; many of its cigars, cigarettes and other tobacco products are now, and have been for many years, sold under well known trade names or brands, without a continuous supply of which it is difficult, because of the buyer demand therefor, for a wholesaler or retailer in cigars, cigarettes and other tobacco products successfully to conduct his business.

PAR. 2. The respondent, The Cincinnati Wholesale Tobacco Association, is a voluntary, unincorporated organization of tobacco jobbers. Its membership consists of, and since its organization its membership has consisted of, the following corporations, firms and persons, viz:

Respondent, Henry Straus, a partnership composed of respondent, David Straus, respondent Robert Straus, and respondent Charles L. Straus; respondent, J. B. Moos Company, a corporation of which the following are officers: respondent, D. J. Brown, President, respondent R. C. Christie, Vice President, respondent E. D. Stickle, Secretary and Treasurer; respondent, Janszen Grocery Company, a corporation, of which corporation the following are officers: respondent, August Janszen, Sr., President, respondent Joseph A. Janszen, Vice President, respondent, Frank Harpenau, Treasurer, and respondent, August Janszen, Jr., Secretary; respondent, I. Keilson & Son, a partnership composed of respondent, I. Keilson, respondent, Dan Keilson, and respondent Alexander Schwartz; respondent, M. & L. Young, a partnership composed of respondent, Louis Young, and respondent, Minnie Young Casey; respondent, G. W. Bickett's Sons, a partnership composed of respondent, G. W. Bickett, and respondent, Ray F. W. Bickett; respondent, Louis C. Weisbrodt; respondent, G. O. Fennell; respondent, John C. Davis; respondent, James E. Cosgrove; respondent, George W. Harriman; respondent, George Schulten Sons, a partnership composed of respondent, John H. Schulten, and respondent, Edwin B. Schulten; respondent, J. C. Nienaber; respondent, H. Haebe; respondent, C. Bosken.

The officers of the respondent, The Cincinnati Wholesale Tobacco Association, are, and have been since its organization, respondent, J. E. Cruse, President, respondent, G. O. Fennell, Vice President, respondent, J. C. Nienaber, Vice President, respondent, John H. Dickerson, Secretary, and respondent, Louis Young, Treasurer.

Each and every one of the corporations, firms, partnerships and persons (excepting James E. Cosgrove and J. C. Nienaber), constituting the membership and organization of the Cincinnati Wholesale Tobacco Association, is now and was at all times hereinafter mentioned, engaged in the city of Cincinnati, State of Ohio, in the business of selling cigars, cigarettes and other tobacco products to wholesale and retail dealers in such products in the State of Ohio and other States in the United States, shipping such cigars, cigarettes and other tobacco products, when sold, from their respective places of business in Cincinnati aforesaid to the purchasers thereof in Ohio and in other States and Territories of the United States and the District of Columbia, and there is now and was at all times

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hereinafter mentioned a constant current of trade and commerce in such cigars, cigarettes and other tobacco products between the State of Ohio and other States of the United States, particularly between the city of Cincinnati and therefrom to and into other States of the United States.

The respondents, James E. Cosgrove and J. C. Nienaber, are now and at all times hereinafter mentioned were engaged in the city of Covington, State of Kentucky, in the business of selling cigars, cigarettes and other tobacco products at wholesale to wholesale and retail dealers in such products in the State of Kentucky and other States of the United States, shipping such cigars, cigarettes and other tobacco products, when sold, from their respective places of business in Covington aforesaid to the purchasers thereof in Kentucky and other States and Territories of the United States and the District of Columbia, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in such cigars, cigarettes and other tobacco products between the State of Kentucky and other States of the United States, and particularly between the city of Covington and therefrom to and into other States of the United States.

The said respondents, James E. Cosgrove and J. C. Nienaber, sold, at all times hereinafter mentioned, cigars, cigarettes and other tobacco products in Cincinnati, shipping the same from Covington, Kentucky, to Cincinnati; while the other respondent members of the Cincinnati Wholesale Tobacco Association sold at all times hereinafter mentioned cigars, cigarettes and other tobacco products in Covington, Kentucky, shipping such products from their respective places of business in Cincinnati aforesaid.

PAR. 3. Each and every one of the corporations, firms, partnerships and persons constituting the membership and organization of the respondent, The Cincinnati Wholesale Tobacco Association, now deals in and at all times hereinafter mentioned dealt in, among others, the products of the respondent, P. Lorillard Company, Inc., which said respondent company sold its products to the respondent members of The Cincinnati Wholesale Tobacco Association by means of orders for such products solicited from the members of said association, which said orders were accepted by officials of said P. Lorillard Company, Inc., located in States other than the States of Ohio and Kentucky, and were filled by shipping such products from factories located outside the States of Ohio and Kentucky to such members at their respective places of business in the States of Ohio and Kentucky aforesaid.

PAR. 4. The respondents named in paragraph 2 hereof, in the year 1921, for the purpose and with the effect of eliminating com-

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petition among themselves and among subjobbers of cigars, cigarettes, and other tobacco products, and among retailers thereof, and among manufacturers thereof, and for the purpose and with the effect of restraining interstate commerce in the purchase and sale of cigars and cigarettes and other tobacco products, unlawfully entered into an agreement, understanding and conspiracy among themselves to fix, through the Cincinnati Wholesale Tobacco Association, respondent, and as members thereof, uniform prices at which cigars, cigarettes and other tobacco products handled by them should thereafter be sold by them, and pursuant to said agreement, understanding and conspiracy, said respondents did, in the year 1921, fix, abide by and adhere to the prices so fixed and agreed upon, and have, since the year 1921, pursuant to the agreement, understanding and conspiracy aforesaid, fixed, abided by and adhered to the prices so fixed and agreed upon.

PAR. 5. The respondent, P. Lorillard Company, Inc., in the year 1921, for the purpose and with the effect of eliminating competition among the respondents named in paragraph 2 hereof, and among subjobbers of its cigars, cigarettes and other tobacco products, and among retailers thereof in the territory covered by the said respondents named in paragraph 2 hereof, did, in the year 1921, unlawfully enter into an agreement, understanding and conspiracy with the said respondents named in paragraph 2 hereof, to fix uniform prices at which its products should thereafter be sold by them, the said respondents named in paragraph 2 hereof, and pursuant to said agreement, understanding and conspiracy, respondent did, in the year 1921, fix, abide by and adhere to the prices so fixed and agreed upon and have since the year 1921, pursuant to the agreement, understanding and conspiracy aforesaid, fixed, abided by and adhered to the prices so fixed and agreed upon.

PAR. 6. For the purpose of carrying out the agreement, understanding and conspiracy described in paragraph 5 hereof, the said P. Lorillard Company, Inc., agreed to and did discontinue and refuse in the year 1921 and since the year 1921 has discontinued and refused to sell its products to certain members of the Cincinnati Wholesale Tobacco Association and their competitors because such members and such competitors resold such products to subjobbers and/or retailers thereof at less than the prices fixed and agreed upon as described in paragraph 5 hereof; and in pursuance of the agreement, understanding and conspiracy aforesaid, the said P. Lorillard Company, Inc., refused to resume selling such members of the Cincinnati Wholesale Tobacco Association except upon the condition that said members would cease selling such products to subjobbers

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and/or retailers thereof at prices less than those prices fixed and agreed upon as described in paragraph 5 hereof.

PAR. 7. The respondent, P. Lorillard Company, Inc., did, in the year 1921, for the purpose and with the effect of eliminating competition among the said respondents named in Paragraph Two hereof and among subjobbers and retailers of its cigars, cigarettes and other tobacco products in the territory covered by the respondents named in paragraph 2 hereof, and for the purpose and with the effect of restraining interstate commerce in the purchase and in the sale of its cigars, cigarettes and other tobacco products unlawfully entered into an agreement, understanding and conspiracy with the respondents named in paragraph 2 hereof to fix the prices at which the products of said P. Lorillard Company, Inc. should be resold by subjobbers and retailers purchasing the same from the respondents mentioned in paragraph 2 hereof, and pursuant to the said agreement, understanding and conspiracy, the respondents did, in the year 1921, fix, and since the year 1921 have fixed, the prices at which subjobbers and retailers resold and should resell such tobacco products.

PAR. 8. For the purpose of carrying out the agreement, understanding and conspiracy described in paragraph 7 hereof, the said respondent, P. Lorillard Company, Inc., in the year 1921, agreed with respondents named in paragraph 2 hereof to discontinue and refuse to sell, and, in the year 1921 and since the year 1921, has discontinued and refused to sell its products to certain members of the Cincinnati Wholesale Tobacco Association and their competitors because such members and such competitors resold such products to subjobbers and/or retailers thereof who would not and/or who did not resell the said products at the prices fixed and agreed upon as described in paragraph 7 hereof; and in pursuance of the agreement, understanding and conspiracy aforesaid, said P. Lorillard Company, Inc. has refused to resume selling such members of the Cincinnati Wholesale Tobacco Association except upon the condition that said members would cease selling such products to subjobbers and/or retailers thereof who would not and/or who did not resell the said products at the prices fixed and agreed upon as described in paragraph 7 hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, P. Lorillard Company, Inc., The Cincinnati Wholesale

Tobacco Association, an unincorporated organization, its officers, J. E. Cruse, President, G. O. Fennell, Vice President, J. C. Nienaber, Vice President, John H. Dickerson, Secretary, and its members as follows: David Straus, Robert Straus and Charles L. Straus, partners trading as Henry Straus, J. B. Moos Company, a corporation, and its following officers, D. J. Brown, President, R. C. Christie, Vice President, E. D. Stickle, Secretary and Treasurer; Janszen Grocery Company, a corporation, and its following officers; August Janszen, Sr., President, Joseph A. Janszen, Vice President, Frank Harpenau, Treasurer, August Janszen, Jr., Secretary; I. Keilson, Dan Keilson and Alexander Schwartz, partners, trading as I. Keilson & Son; Minnie Young Casey, trading as M. & L. Young; G. W. Bickett and Ray F. W. Bickett, partners, trading as G. W. Bickett's Son; Louis G. Weisbrodt; G. O. Fennell; John C. Davis; James E. Cosgrove; George W. Harriman; John H. Schulten and Edwin E. Schulten, partners, trading as George Schulten Sons; J. C. Nienaber; H. Haebe and C. Bosken, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondent P. Lorillard Company, Inc., filed its answer denying the use of the methods of competition charged in the complaint; the respondents Janszen Grocery Company, August Janszen, Sr., Joseph A. Janszen, Frank Harpenau and August Janszen, Jr., filed their joint answer denying the use by them and by each of them of the methods of competition charged in the complaint; respondent James E. Cosgrove on September 20, 1922, filed his answer admitting that the respondents hereinabove mentioned, excepting P. Lorillard Company, Inc., in June, 1921, by agreement among themselves fixed resale prices on cigarettes and other tobacco products handled by them and each of them and that for about two months after June, 1921, the said respondents maintained the resale prices fixed by such agreement.

After the filing of the said answer of the said respondent Cosgrove, he filed on October 28, 1922, with the Federal Trade Commission, through his attorneys, a motion to withdraw his said answer and to be permitted to file in substitution thereof a formal answer, which said motion upon due consideration by the said Commission was denied by its order dated November 1, 1922; all of the other said respondents filed their joint answer denying the use by them or any of them of the methods of competition charged in the complaint.

Thereupon hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and upon be-

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half of the respondents before George McCorkle, Esq., an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and having duly considered the record (the testimony having been reduced to writing and filed in the office of said Commission) and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, P. Lorillard Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Jersey City, in said State, and with various factories, some located in the State of New Jersey aforesaid and others in different other States of the United States; it was at all times hereinafter mentioned and still is engaged in the business of manufacturing cigars, cigarettes and other tobacco products and in selling the same throughout the United States, causing its products, when so sold, to be transported from the point of manufacture in one State to purchasers located in other States of the United States, the Territories thereof and the District of Columbia, and there is now and was at all times hereinafter mentioned, a constant current of trade and commerce in said cigars, cigarettes, and other tobacco products manufactured by said respondents, between and among the various States and Territories of the United States and the District of Columbia; the said respondent is now and was at all times hereinafter mentioned one of the largest manufacturers and sellers of cigars, cigarettes and other tobacco products in the United States; many of its cigars, cigarettes and other tobacco products are now, and have been for many years sold under well known trade names or brands, without a continual supply of which it is difficult, because of the demand therefor, for a wholesaler or retailer in cigars, cigarettes and other tobacco products successfully to conduct his business.

PAR. 2. The respondent, The Cincinnati Wholesale Tobacco Association, was a voluntary, unincorporated organization of tobacco jobbers. It was organized early in June, 1921, and existed and held meetings at least until October 12, 1921, at or about which time the Federal Trade Commission made the preliminary investigation upon which were based the charges contained in the complaint in the proceeding.

The membership of the said respondent, The Cincinnati Wholesale Tobacco Association, during the existence of the said Association consisted of the following corporations, firms, and persons, viz:

Respondent Henry Straus, a partnership composed of respondent, David Straus, respondent Robert Straus, and respondent Charles L. Straus; Respondent J. B. Moos Company, a corporation, of which the following were officers during the period of the existence of the said Association: respondent D. J. Brown, President, respondent R. C. Christie, Vice President, respondent E. D. Stickle, Secretary and Treasurer; Respondent, Janszen Grocery Company, a corporation, of which the following were officers during the period of the existence of the said Association: respondent, August Janszen, Sr., President, respondent, Joseph A. Janszen, Vice President, respondent Frank Harpenau, Treasurer, and respondent, August Janszen, Jr., Secretary; Respondent, I. Keilson & Son, a partnership composed of respondent, I. Keilson, respondent, Dan Keilson and respondent, Alexander Schwartz; Respondent, M. & L. Young, a partnership composed of Minnie Young Casey, respondent, and Louis Young, the latter of whom died some time in the period intervening between the dissolution of the respondent Association and the issuance of the complaint herein; Respondent G. W. Bickett's Sons, a partnership composed of respondent, G. W. Bickett, and respondent, Ray F. W. Bickett; Respondent, Louis C. Weisbrodt; Respondent, G. O. Fennell; Respondent, John C. Davis; Respondent, James E. Cosgrove; Respondent, George W. Harriman; Respondent, George Schulten Sons, a partnership composed of respondent, John H. Schulten, and respondent, Edwin B. Schulten; Respondent, J. C. Nienaber; Respondent, H. Haebe; Respondent, C. Bosken.

The officers of the respondent, The Cincinnati Wholesale Tobacco Association during its entire existence, were as follows: Respondent, J. E. Cruse, President, respondent, G. O. Fennell, Vice President, respondent J. C. Nienaber, Vice President, respondent, John H. Dickerson, Secretary, and said Louis Young, Treasurer.

Each and every one of the corporations, firms, partnerships and persons (excepting James E. Cosgrove and J. C. Nienaber) constituting the membership and organization of the Cincinnati Wholesale Tobacco Association, is now and was at all times hereinafter mentioned, engaged in the City of Cincinnati, State of Ohio, in the business of selling cigars, cigarettes, and other tobacco products to wholesale and retail dealers in such products in the State of Ohio and other States in the United States, shipping such cigars, cigarettes, and other tobacco products, when sold, from their respective places of business in Cincinnati aforesaid to the purchasers thereof in Ohio and in other States of the United States, and there is now and was at all times hereinafter mentioned a constant current of

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trade and commerce in such cigars, cigarettes and other tobacco products between the State of Ohio and other States of the United States, particularly between the city of Cincinnati and therefrom to and into other States of the United States.

The respondents, James E. Cosgrove and J. C. Nienaber, are now and at all times hereinafter mentioned were engaged in the city of Covington, State of Kentucky, in the business of selling cigars, cigarettes and other tobacco products at wholesale to wholesale and retail dealers in such products in the State of Kentucky and other States of the United States, shipping such cigars, cigarettes and other tobacco products, when sold, from their respective places of business in Covington aforesaid to the purchasers thereof in Kentucky and other States of the United States, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in such cigars, cigarettes and other tobacco products between the State of Kentucky and other States of the United States, and particularly between the City of Covington and therefrom to and into other States of the United States.

The said respondents, James E. Cosgrove and J. C. Nienaber, sold, at all times hereinafter mentioned, cigars, cigarettes and other tobacco products in Cincinnati, shipping the same from Covington, Kentucky, to Cincinnati; while the other respondent members of the Cincinnati Wholesale Tobacco Association sold at all times hereinafter mentioned cigars, cigarettes and other tobacco products in Covington, Kentucky, shipping such products from their respective places of business in Cincinnati aforesaid.

PAR. 3. Each and every one of the corporations, firms, partnerships and persons constituting the membership and organization of the respondent, The Cincinnati Wholesale Tobacco Association, now deals in and at all times hereinafter mentioned dealt in, among others, the products of the respondent, P. Lorillard Company, Inc., which said respondent company sold and now sells its products to the respondent members of the Cincinnati Wholesale Tobacco Association by means of orders for such products solicited from the members of said association, which said orders were and are accepted by officials of said P. Lorillard Company, Inc., located in States other than the States of Ohio and Kentucky, and were and are filled by shipping such products from factories located outside the States of Ohio and Kentucky to such members at their respective places of business in the States of Ohio and Kentucky aforesaid.

PAR. 4. In the territory in which the respondent members of the Cincinnati Wholesale Tobacco Association sell cigarettes and other tobacco products, such cigarettes and other tobacco products have been distributed for many years by the manufacturers thereof, in-

cluding respondent P. Lorillard Company, Inc., through wholesalers; the manufacturers, including respondent P. Lorillard Company, Inc., sell only to wholesalers, who, in turn, resell to retailers and to subjobbers, the latter of whom, purchasing from wholesalers, resell to retailers; the consumer buys from the retailer. For many years it has been the practice in the tobacco business for manufacturers, including respondent P. Lorillard Company, Inc., to sell to their direct customers, namely, wholesalers, on the basis of such manufacturers' list prices. From these list prices the manufacturers, including respondent P. Lorillard Company, Inc., have allowed and do allow their direct customers a discount of 10 per cent and an additional discount of 2 per cent for cash within ten days; the wholesaler resells to the retailer and to the subjobber on the basis of the manufacturers' list prices, allowing to the subjobber and to the retailer discounts from these list prices, and in some cases the wholesaler sells to the retailer at the list price. The list price is less than the price intended to be charged by the retailer to the consumer, the difference between the intended price charged by the retailer to the consumer and the list price, or the list price less the discount allowed by the wholesaler, affords the retailer his margin for costs and profit. For a long time prior to June, 1921, the respondent named in paragraph 2 hereof, as constituting the membership and officers of the respondent association (all of whom will hereinafter be referred to as the members), had been allowing various discounts on resales of cigarettes and other tobacco products to retailers and to subjobbers. Such retailers and subjobbers, prior to June, 1921, had the advantage of competitive discounts on purchases from the members. These discounts ranged all of the way up to 10 per cent off such list prices.

PAR. 5. In May, 1921, prior to the organization of respondent, the Cincinnati Wholesale Tobacco Association (which will hereinafter be referred to as the association), the manager of the Scrap Department of respondent P. Lorillard Company, Inc. (which said P. Lorillard Company, Inc., will hereinafter be referred to as the Lorillard Company), by threats to various members that if they did not maintain a discount of 2 per cent from the list prices of the Lorillard Company's products, their orders for said company's products would thereafter be declined, and by suggestion to other members to maintain a discount of 2 per cent from the list prices of said company's products, induced the members by agreement among themselves, each with the other, in cooperation with the Lorillard Company, to establish a uniform discount at which the members would thereafter resell the Lorillard Company's products. The

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Scrap Department of the Lorillard Company was the largest department of that company in the territory in which the members carried on their business. Said manager throughout 1921, had charge of the selling forces of the Lorillard Company in the following States: Michigan, Ohio, Indiana, Illinois, Wisconsin, Kentucky and Missouri. His immediate superior was D. H. Ball, who was at that time, namely, throughout 1921, and still is, located in New York City. Said D. H. Ball was throughout 1921 and still is vice president of the Lorillard Company, in charge of sales. Said manager was familiar with the business policies of the Lorillard Company and it was his duty to carry out such business policies in the territory under his jurisdiction. By reports made by him from time to time, the said manager kept the said D. H. Ball informed of his activities in his territory and of trade conditions in his territory.

PAR. 6. In May, 1921, said manager suggested to respondent Weisbrodt that Cincinnati jobbers get together and fix a uniform price on tobacco products. In May, 1921, said manager notified respondent Nienaber to maintain a 2 per cent discount on Lorillard Company's products. A short time prior to the organization of the association, said manager suggested to respondent I. Keilson that Cincinnati and Covington jobbers, by combination among themselves, maintain proper prices on Lorillard Company's goods and that if they did not do so, some of them would be cut off from the list of direct purchasers from the Lorillard Company.

Another of the respondents, Fennell, known to the trade and to the Lorillard Company as a price cutter, was warned in May, 1921, by said manager to cease cutting prices on Lorillard Company's products, and at that time the said Fennell was directed by the said manager to join with other customers of the Lorillard Company in Cincinnati, who, the said manager stated to the said Fennell, were going to put into general operation a discount of 2 per cent from the list price of the Lorillard Company's products. Said Fennell was, at that time, informed by the said manager that if he, the said Fennell, did not join with the other local customers of the Lorillard Company into putting into general operation a discount of 2 per cent, he, the said Fennell, could not continue as a direct purchaser from said company. Because of the threats made by the said manager to the said Fennell that if he, the said Fennell, did not cease price cutting and that if he did not maintain with the other local customers of the Lorillard Company a uniform discount of 2 per cent from the manufacturer's list prices, he would be cut off from the list of direct customers of the Lorillard Company, said Fennell joined the association. Another reason for his joining the association was the information conveyed to him by a division

salesman of the Lorillard Company that if he did not join he would not be able to continue to purchase the products of the Lorillard Company.

The said manager of the Scrap Department of the Lorillard Company reported to the said D. H. Ball that the members were going to attempt, by agreement among themselves, to fix uniform discounts which the members would thereafter allow on the resale of tobacco products, including those of the Lorillard Company. Upon the receipt by him of such reports, the said D. H. Ball, on May 20, 1921, wrote to the said Fennell and to respondent Janszen Grocery Company, another well-known price cutter, letters identical in language, as follows:

NEW YORK, May 20, 1921.

There seems to be a general movement throughout the country on the part of the jobbers—and we have recently been advised it has extended to Cincinnati—to secure a fair margin of profit for handling tobacco products.

This Company does not assume to tell you at what price you shall sell its merchandise after you have paid for it, but we are providing a trade allowance of 10% to the jobbers and it is exceedingly discouraging to find so many of them are inclined to give an excessive proportion of it away.

We believe the tobacco business as a whole—and the manufacturer's, jobber's and retailer's interest individually—is best served when our goods are being sold by each and every one of them at the prices intended.

We trust it will be your pleasure to cooperate with the movement on our line of merchandise.

May we not hear from you in reference to the above subject?

With kind regards, we beg to remain,

Yours very truly,

D. H. BALL, *Vice President.*

The said letters to respondents Fennell and the Janszen Grocery Company were intended by the said D. H. Ball, Vice President of the Lorillard Company, to suggest to the said Fennell and to the said Janszen Grocery Company, and the said letters did suggest to said Fennell and to said Janszen Grocery Company, that each of them confer with other tobacco jobbers in their territory concerning means and methods of cooperating with such other distributors of the Lorillard Company, and with that company, towards selling said company's products at the prices intended by said company; the said letters were also intended by the said D. H. Ball as requests and the said letters were requests to the said Fennell and to the Janszen Grocery Company not to block the efforts on the part of the Lorillard Company's other jobbers in Cincinnati, Ohio, and Covington, Kentucky, by combination among such other jobbers and with the Lorillard Company to secure prices satisfactory to such other jobbers and to the Lorillard Company on the resale of the Lorillard Company's products, and not to do anything to counteract

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the efforts of such other jobbers in combination with each other and with the Lorillard Company to resell at prices satisfactory to the Lorillard Company and to such other jobbers.

PAR. 7. At the time the said manager of the said scrap department of the Lorillard Company and the said D. H. Ball, vice president of the Lorillard Company, were endeavoring to secure the cooperation of the members in reselling the said company's products at prices satisfactory to it, the said Lorillard Company was seeking in other sections of the United States the cooperation of its distributors for the purpose of preventing resales of the Lorillard Company's products at prices unsatisfactory to the said company. On May 25, 1921, the said Lorillard Company sent the following circular to all of its distributors in West Virginia, in which State some of the members resold Lorillard's products:

P. LORILLARD COMPANY,
119 WEST 40TH STREET,
New York City, N. Y., May 25, 1921.

To our customers:

The 10% discount from our list price allowed all jobbers on our tobacco line is what we consider a fair and legitimate profit, accruing to the jobber for handling and distributing our goods.

Long business usage has confirmed the fairness of this arrangement.

Knowing that a reasonable profit is essential to the success of any business and that only successful jobbers are satisfactory and dependable distributors, we feel that it is good business for us to urge the jobber to sell our brands at prices that will not prove an injury to our valuable trademarks. Where the jobber persists in disregarding our policy in such matters, it is logical for us to conclude that he is willing to sacrifice our business welfare for his own selfish interests.

We believe you will agree with us that it would be a very short-sighted policy to continue to supply such firms with the means of demoralizing our accustomed channels of distribution.

We trust it will be your pleasure to cooperate with us in preventing that which is undesirable.

All orders subject to acceptance by our New York Office, and if accepted will be filled at prices ruling on day of shipment.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this Company.

Yours respectfully,

P. LORILLARD COMPANY, INCORPORATED.

PAR. 8. Advised and encouraged by the Lorillard Company so to do, the members organized the association, and advised and encouraged by the Lorillard Company so to do, the members at a meeting of the association held on June 8, 1921, agreed, each with the other, thereafter to resell cigarettes and other tobacco products to retailers at 2 per cent discount from list prices and to subjobbers at 7 per cent discount from list prices; at the same time the members

agreed, each with the other, thereafter not to allow a discount greater than 2 per cent from list prices to any subjobber who, on reselling to a retailer, would thereafter allow a discount greater than 2 per cent from a manufacturer's list price.

At the same time the said members agreed, each with the other, that if any of them should thereafter be discontinued by a manufacturer from its list of direct customers for having sold to a retailer at a discount greater than 2 per cent, or to a subjobber at a discount greater than 7 per cent from such manufacturer's list price, not to resell to such member, except at a discount of 2 per cent from such manufacturer's list price. On June 29, 1921, at a meeting of the association, the members adopted a list of subjobbers entitled to a discount of 7 per cent and at a meeting of the association, held on July 13, 1921, the members struck from said list the names of certain subjobbers who thereafter were allowed a discount of only 2 per cent from manufacturer's list prices, instead of a discount of 7 per cent, to which 7 per cent discount such subjobbers had been previously entitled by virtue of having been on the said subjobbers' list.

PAR. 9. The members, at a meeting of the association, held July 27, 1921, agreed, each with the other, by a resolution adopted at that meeting to allow a uniform discount of 2 per cent from list prices on resales to retailers and a uniform discount of 7 per cent from list prices on resales to subjobbers, when such resales to retailers and to subjobbers were made outside of the State of Ohio.

PAR. 10. All of the agreements made by the members, each with the other, described in paragraphs 8 and 9 hereof, were entered into by the said members with the aid of and in combination with the Lorillard Company.

PAR. 11. The members maintained until at least October 12, 1921, the uniform discount fixed by them, as described in paragraphs 8 and 9 hereof, except that in some instances some few of the members allowed higher rates of discounts, but in invoicing such sales said members billed at the rates of discount fixed by the members, as described in paragraphs 8 and 9 hereof, and allowed secret additional discounts; such invoices were made by such members because of their fear that if the Lorillard Company learned that they had allowed rates of discount greater than those fixed by the members as described in paragraphs 8 and 9 hereof, they would be discontinued from the list of direct purchasers of the Lorillard Company.

PAR. 12. One of the members, the Janszen Grocery Company, by a letter dated July 8, 1921, asked the Lorillard Company whether it would object to the allowance by the said Janszen Grocery Com-

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pany of such discounts as appeared to the said Janszen Grocery Company to be advisable; on July 11, 1921, the Lorillard Company, by a letter of that date, answered the said letter of the Janszen Grocery Company by stating that it enclosed for its reply a copy of the circular letter, hereinafter quoted in paragraph 14 hereof, which said circular, the Lorillard Company stated in said letter, set forth its position. The said Janszen Grocery Company, in August, 1921, allowed to some of its customers rates of discount greater than those fixed by the members, as described in paragraphs 8 and 9 hereof. This fact, having come to the attention of the other members, they agreed, each with the other, at a meeting of the association to write, and in pursuance of such agreement they did write, to the Lorillard Company in September, 1921, informing said company of the fact that the Janszen Grocery Company was allowing higher rates of discount than those fixed by the members as described in paragraphs 8 and 9 hereof. Upon receipt of such letters, the Lorillard Company, for the purpose of assisting the members in maintaining the discounts fixed, as described in paragraphs 8 and 9 hereof, discontinued in September, 1921, shipments to the Janszen Grocery Company of goods previously ordered and did not resume shipments to the said Janszen Grocery Company until October 6, 1921, at which time the Lorillard Company became satisfied that thereafter the said Janszen Grocery Company would not allow, upon resales of the products of the Lorillard Company, discounts greater than those fixed by the members, as described in paragraphs 8 and 9 hereof.

PAR. 13. One of the distributors of the Lorillard Company reselling in the territory in which the members resold the products of the Lorillard Company, is George Worhley. He was invited by respondent Nienaber to join the Association, which invitation he declined. He also received from the secretary of the association a written invitation to join, but this invitation was declined. The discounts which said Worhley allowed on resales to his customers were greater than those fixed by the members, as described in paragraphs 8 and 9 hereof. After the said Worhley declined the said invitations to join the said association and after the said members put into effect the uniform discounts fixed as described in paragraphs 8 and 9 hereof, the aforesaid Manager of the Scrap Department of the Lorillard Company informed the said Worhley that if he, the said Worhley, did not maintain the prices fixed by the association, he would be stricken from the list of jobbers of the Lorillard Company and no more tobacco would be shipped to him by that Company. Because of the said threat of the said Manager, said Worhley changed the rates of discount allowed by

him on resales to his customers, so that when changed, such discounts were the rates of discount fixed by the members, as described in paragraphs 8 and 9 hereof.

PAR. 14. On June 29, 1921, the Lorillard Company sent to each of its distributors in Ohio, and on July 21, 1921, it sent to each of its distributors in Arkansas, Colorado, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming, the following circular letter:

NEW YORK.

To our customers:

The 10% discount from our list price allowed all jobbers on our tobacco line is what we consider a fair and legitimate profit, accruing to the jobber for handling and distributing our goods.

Long business usage has confirmed the fairness of this arrangement.

Knowing that a reasonable profit is essential to the success of any business and that only successful jobbers are satisfactory and dependable distributors, we feel that it is good business for us to urge the jobber to sell our brands at prices that will not prove an injury to our valuable trade-marks. Where the jobber persists in disregarding our policy in such matters, it is logical for us to conclude that he is willing to sacrifice our business welfare for his own selfish interest.

We believe that you will agree with us that it would be a very short-sighted policy to continue to supply such firms with the means of demoralizing our accustomed channels of distribution.

All orders subject to acceptance by our New York Office, and if accepted will be filled at prices ruling on day of shipment.

No representative or employee of this Company has authority to change any circular, letter or price list issued by this company.

Yours respectfully,

P. LORILLARD COMPANY.

By these circulars the Lorillard Company meant that it would discontinue selling to any of its distributors who would allow higher rates of discount from its list prices than those being given by the bulk of the distributing power of the Lorillard Company in such distributor's territory.

PAR. 15. The aforesaid acts and things done by the members and each of them had the tendency and capacity to constrain and did constrain all wholesale tobacco dealers doing business in the territory above mentioned to uniformly sell cigarettes and other tobacco products to their retailer and subjobber customers at prices fixed by the respondent association and its members as hereinbefore set out and hence to hinder and suppress and did hinder and suppress all competition in the wholesaling of cigarettes and other tobacco products in the said territory, particularly among the members, and further to hinder and restrict and did hinder and restrict competition between all subjobbers and retail dealers in said territory. The

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said practices of the members tended to hinder and obstruct the free and natural flow of commerce in the channels of interstate commerce. The aforesaid actions and things done by the Lorillard Company had the tendency and capacity to constrain and did constrain all of its wholesale dealers doing business in the territory above mentioned to uniformly sell its products to their retailer and subjobber customers at the prices fixed by the association and its members as hereinbefore set out and hence to hinder and suppress and did hinder and suppress all competition in the wholesaling of cigarettes, and other tobacco products of the Lorillard Company in said territory, particularly among the members of the association and further to hinder and restrict and did hinder and restrict competition between all subjobbers and retail dealers in said territory. Said respondent's practices thus tended to and did hinder and obstruct the free and natural flow of commerce in interstate commerce.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the Complaint of the Commission, the answers of the respondents, the testimony and evidence and argument of counsel, and the Commission having made its findings as to the facts, and having reached its Conclusion that the respondents hereinafter named 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,"

Now, therefore, it is ordered, That the Cincinnati Wholesale Tobacco Association, its officers, as follows: J. E. Cruse, President, G. O. Fennell, Vice President, J. C. Nienaber, Vice President, John H. Dickerson, Secretary and the following corporations, partnerships and persons: David Straus, Robert Straus, and Charles L. Straus, partners trading as Henry Straus; J. B. Moos Company, a corporation and its following officers: D. J. Brown, President, R. C. Christie, Vice President, E. D. Stickle, Secretary and Treasurer; Janszen Grocery Company, a corporation, and its following officers:

August Janszen, Sr., President, Joseph A. Janszen, Vice President, Frank Harpenau, Treasurer, and August Janszen, Jr., Secretary; I. Keilson, Dan Keilson, Alexander Schwartz, partners, trading as I. Keilson & Son; Minnie Young Casey, trading as M. & L. Young; G. W. Bickett and Ray F. W. Bickett, partners trading as G. W. Bickett's Son; Louis C. Weisbrodt; G. O. Fennell; John C. Davis; James E. Cosgrove; George W. Harriman; John H. Schulten and Edwin E. Schulten, partners trading as George Schulten Sons; J. C. Nienaber; H. Haebe, C. Bosken, and each of them cease and desist from fixing, enforcing and maintaining, and from enforcing and maintaining, by combination, agreement or understanding among themselves, or with or among any of them, or with any other wholesaler of cigarettes of their tobacco products, or any manufacturer thereof, resale prices for cigarettes or other tobacco products dealt in by said respondents, or any of them, or by any of them, or by any other wholesaler of cigarettes or other tobacco products.

And it is further ordered, That P. Lorillard Company, Inc. cease and desist from assisting and from agreeing to assist any of its dealer customers in maintaining and enforcing in the resale of cigarettes and other tobacco products manufactured by the said P. Lorillard Company, Inc., resale prices for such cigarettes and other tobacco products fixed by any such dealer customer by agreement, understanding, or combination with any other dealer customer of said P. Lorillard Company, Inc.

It is further ordered, That all of said respondents and each of them shall file with the Federal Trade Commission, within sixty (60) days from the date of the service upon them of this Order, a copy in writing, stating the manner and form in which this Order has been conformed to.

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FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

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FEDERAL TRADE COMMISSION

v.

SALT LAKE COOPERATIVE WOOLEN MILLS.