

Syllabus.

FEDERAL TRADE COMMISSION

v.

WISCONSIN WHOLESALE GROCERS' ASSOCIATION, ITS
OFFICERS, DIRECTORS AND MEMBERS.

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

Docket 894—May 23, 1924.

SYLLABUS.

Where an association which included in its membership a substantial majority of the wholesale grocers doing business in the territory concerned, and the officers and members thereof; in pursuance of a concerted effort to induce manufacturers from whom they purchased, to guarantee against price decline the goods sold by them to said wholesalers, and acting through the medium of letters to manufacturers concerned, and through their association secretary and the association bulletin, in which there were set forth communications, advice, and suggestions from the members and from said secretary.

- (a) Urged the members, in response to the request of one of their number, to write to a manufacturer in anticipation of a decline in the price of his products, requesting such a guarantee, and, following such decline, to protest the lack of such a guarantee, and demand a rebate on his stocks in their hands;
- (b) Advised said manufacturer that the sentiment in favor of such a guarantee was general among jobbers and that should he fail to do something for them he would lack the cooperation in the future that he had had in the past;
- (c) Advocated and encouraged persistence among the members in bringing and maintaining pressure upon the manufacturers to achieve the object above set forth;
- (d) Advised a manufacturer who refused to concede such a guarantee, that his reasons for so doing would be placed before the membership, and called his attention to the action of other manufacturers who had granted such concession and to the fact that a competitive situation was involved, as warranting the suggestion that he seriously consider the advisability of granting a rebate on stocks of his products in the hands of the jobber;
- (e) Requested of the membership names of those manufacturers who did, and of those who did not, grant such a guarantee and circulated among the membership lists of the former, which it had thus secured and from other trade sources with which it cooperated;
- (f) Circulated the names of several manufacturers who did not make such a guarantee, together with derogatory comment and expressions from members to the effect that they were disposed to push the products of manufacturers who gave such a guarantee and to withhold cooperation in the sale of competing products from those who did not;

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- (g) Suggested that in the case of price concessions on commodities handled by the members and not covered by a guarantee, said commodities be disposed of on the basis of original cost to the members rather than replacement cost, and circulated a price so based, resulting in a jobber's price for the article concerned higher than that contemplated by the manufacturer; and
- (h) Set forth the need of the guarantee sought in order to protect the members against price competition with each other;
- With the capacity and tendency to cause a refusal or curtailment of purchases from manufacturers who did not grant such a guarantee and to prejudice and injure the business thereof, and to benefit correspondingly that of those who did, and with a dangerous tendency to hinder competition between the two classes of manufacturers and to lessen substantially price competition among the members;
- Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Walter B. Wooden and Mr. E. R. Blake for the Commission.
Mr. Edwin J. Gross of Milwaukee, Wisconsin, for respondent.

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 Wisconsin Wholesale Grocers' Association, its officers, directors 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, Wisconsin Wholesale Grocers' Association is a voluntary unincorporated trade association composed of wholesale grocers and jobbers of grocery and food products having their places of business in the States of Wisconsin and Minnesota. The object of said association is to promote and protect the common interests of said members. Respondents, Willibald Hoffman, James D. Godfrey, Mitchell Joannes, Francis E. Dewey, Francis J. Rickert, and their respective successors, were at all times hereinafter mentioned and still are officers of said association administering its affairs. Respondents Willibald Hoffman, James D. Godfrey, Mitchell Joannes, C. F. Mittelstadt, F. M. Fox, A. C. Blackburn and F. C. Comstock, and their successors, were at all times hereinafter mentioned and still are directors of said Association together constituting its board of directors; Chesbrough-Moss Company, Chippewa

Valley Mercantile Company, Eau Clair Grocer Company, The H. T. Lange Company, The Zinke Company, Joannes Brothers Company, Greiling-Innes Company, Kenosha Wholesale Grocer Company, J. J. Hogan, Incorporated, The Sisson-Seilestad-Hougen Company, Gould, Wells & Blackburn Company, Kluster & Company, Simon Brothers Company, Plumb & Nelson Company, J. F. Rappel Company, Marshfield Grocer Company, H. F. Mueller Company, Henrickser & Jacobson Company, Lange Grocer Company, The Copps Company, A. Kickbusch Grocery Company, Wilson Mercantile Company, Latsch & Son, Dahlman & Inbusch Grocery Company, Edward Dewey Company, Louis Dobbratz Company, George Geiger & Company, E. R. Godfrey & Sons Company, John Hoffman & Sons Company, Kurth Brothers Company, Mueller Wild Company, E. R. Pahl & Company, D. Reik & Sons Company, George L. Robinson & Company, Roundy, Peckham & Dexter Company, J. & M. Steiner, were at all times hereinafter mentioned and now are corporations, organized and existing under the laws of the State of Wisconsin 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 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 products in several States of the United States other than the States in which are located respectively their several places of business, and cause said commodities to be transported from the States wherein the same are purchased to their respective places of business, and thereafter sell said commodities and cause same to be transported from their respective places of business to purchasers at points in 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. In the year 1920 respondent association acting on behalf of its said members and in cooperation with them, adopted and has since carried out a policy and plan of coercing, and attempting

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to coerce, manufacturers from whom the members of said association purchase 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, directors and members cooperating 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 against declines in the sale 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 and forwards a copy of said list to each member of the association for the information and use of the members in making purchases of the commodities in which they deal;

(c) The association exchanges said list with other similar associations for their similar lists and forwards the lists received from such other associations to the members of respondent association for similar information and use;

(d) The association by means of letters, personal interviews and in other ways urges, and seeks by intimidation, to coerce various manufacturers who do not so guarantee against decline, into adopting said practice and notifies the members of its action in that behalf, urging the members to cooperate with the association in that regard by individually bringing similar pressure to bear upon said manufacturers;

(e) Said members upon receiving the information and suggestions set out in the preceding specification bring similar pressure to bear upon said manufacturers to cause them to adopt said practice;

(f) The success or failure of the coercive efforts set out in specifications (d) and (c) is notified by the association of its members and vice versa;

(g) 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 added to the aforesaid list of names of guaranteeing manufacturers, and copies of the list thus revised are sent by the association to the members from time to time, or the names of such additional guaranteeing manufacturers are notified by the association to the members to be added to said list;

(h) 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 where ever possible make said purchases from the manufacturers so guaranteeing in preference to manufacturers who do not, or who refuse, to so guarantee.

PAR. 3. The acts and things done by respondent association, its officers, directors and members cooperating together, as above set out, tended and still tend to restrict, diminish and obstruct the sales and business of manufacturers of food products who do not guarantee against decline in prices as above set out, to the advantage of competing manufacturers of similar products who do so guarantee, and whose names appear in aforesaid lists 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, MODIFIED 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 herein charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance by their attorney, Edward J. Gross, 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,

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duly certified, and duly transmitted to the Commission, and the Commission having again carefully examined and fully considered the testimony and documentary evidence offered and received, as heretofore set out, hereby makes this its modified findings as to the facts and conclusion:

MODIFIED FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Wisconsin Wholesale Grocers' Association, is now and for more than twenty-five years last past has been a voluntary unincorporated association, composed of wholesale grocers and jobbers of groceries and food products, residing in the States of Wisconsin and Minnesota; that the association was originally formed by wholesale grocers who resided in the State of Wisconsin, that the membership was later extended to take in wholesale grocers, residents of the State of Minnesota who were located in towns adjacent to the State line between Minnesota and Wisconsin; that the principal office of said respondent association is in Milwaukee, Wisconsin, where the secretary resides; that the objects for which the association was formed are to promote and protect the common interests of the members and to advance the welfare of the wholesale grocery business in this territory; that the personnel of said association membership is subject to more or less frequent change, but at the time this proceeding was instituted included some thirty-six wholesale grocer concerns; that the membership of the respondent association comprises 75 per cent of the wholesale grocers in the State of Wisconsin, and the respondent members of the respondent association do approximately 75 per cent of the wholesale grocery business in the State of Wisconsin.

PAR. 2. That the respondent members of said respondent association buy and sell and deal in groceries, food products and kindred commodities; that they purchase said groceries, food products and kindred commodities from manufacturers and dealers located in various States of the United States, and cause the same to be transported from said various States to the several warehouses and places of business of these respondents located in the States of Wisconsin and Minnesota; that some of said respondent members of said respondent association, after purchasing said groceries, food products and kindred commodities, sell the same to various purchasers located in various States of the United States, other than the State in which the seller is located, more particularly in Wisconsin and the States adjacent to the States of Wisconsin and Minnesota; that they cause said goods so sold to various purchasers to be transported

from their warehouses and places of business located in the States of Wisconsin and Minnesota, as aforesaid, to the various purchasers so located in the various States of the United States other than the State in which the seller is located, and that in the purchase, sale, and transportation of said groceries, food products, and kindred commodities as heretofore set out, said respondents are in active and direct competition with each other and with other persons, partnerships, firms, and corporations similarly engaged in commerce.

PAR. 3. That the respondent, secretary of the respondent association, has held the office of secretary for more than twenty-five years; that the by-laws and rules of practice of said respondent association provide for various duties and rules of action of said secretary and the other officers of said respondent association; that the rules of practice of said respondent association have not been closely followed for the past several years; that the said secretary, by reason of his having held the office for the past twenty-five years, is guided in his action largely by his own initiative, supplemented by close personal contact with officers and members of respondent association, particularly those located at Milwaukee; that his actions in all matters and his conduct of the office of secretary of said association have been approved and upheld by the officers and directors of said respondent association; that the said secretary publishes at frequent but irregular intervals a mimeographed bulletin; that in the said bulletin are published letters from members and other sources, articles and news items, which the secretary deems of interest and value to the members of said respondent association, and said bulletin is used as a medium to convey the ideas of various members to each other concerning any matter that they feel would be of interest and value to the membership of the respondent association; that the secretary sometimes includes information, comments and suggestions of his own in said bulletins, emphasizing and supplementing the ideas presented in the letters of members; that said mimeographed bulletin when so published is mailed to all members of the association; that said secretary of said respondent association also keeps a mailing list of certain persons and of secretaries of like associations located in various States; that when said bulletin is issued a copy of the same is mailed to the various people named on said mailing list; that said secretary, when he publishes in the said bulletin a letter from any member of said respondent association, never publishes the signature, and the writer of any such letter is never disclosed.

PAR. 4. That the period covered by the last few months of the year 1920 and the first half of 1921 was a period of marked decline in

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the price of groceries, food, products, and kindred commodities dealt in by the respondent members of the respondent association; that some manufacturers from whom respondent members were purchasing in interstate commerce at that time guaranteed their products against their own decline in price, and that competing manufacturers from whom respondent members were also purchasing in interstate commerce did not so guarantee; that such a guarantee by manufacturers means that, in the event the manufacturer reduces his own selling price to the jobber, he will credit or rebate the jobber on the jobber's unsold stock by an amount equal to the difference between the price paid by the jobber and the reduced price later put into effect by the manufacturer.

PAR. 5. That on or about the first of November, 1920, one of the members of respondent association anticipated a decline in the price of a commodity known as "Jello", which was manufactured by the Genesee Pure Food Company, and said member wrote to said respondent secretary requesting him to ask the respondent members of the respondent association to write to the Genesee Pure Food Company asking the said Genesee Pure Food Company to protect the floor stock in the hands of the wholesale grocers against a decline in price; that said letter above referred to was published in the bulletin of November 15th and the said respondent secretary added a note in said bulletin requesting members to write to the said Genesee Pure Food Company asking them to protect the floor stock in the hands of the wholesale grocers against a decline in price in the event the said Genesee Pure Food Company reduced the price of the commodity "Jello." That said respondent secretary as secretary of the respondent association also wrote to the said Genesee Pure Food Company asking them to protect the floor stock in the hands of the members of said respondent association against decline in price in the event the said Genesee Pure Food Company reduced the price of the commodity "Jello." The said Genesee Pure Food Co., in answer to the said letter written by said respondent secretary, replied that they did not protect stock against decline; that on or about the 10th of December the Genesee Pure Food Company did reduce the price of their product "Jello"; that a majority of the wholesale grocers in Wisconsin and respondent members of respondent association had on their floors large stocks of the said product "Jello"; that when the price was reduced as aforesaid a member of said respondent association wrote to said respondent secretary concerning the said fact and requested the said secretary to urge the members of said respondent association through the said bulletin to write to said Genesee Pure Food Com-

pany letters of protest and to ask that the respondent members of said respondent association be rebated for the floor stock on hand; that said secretary published said request in said bulletin and also asked members to write to said Genesee Pure Food Company protesting against the decline in price unless the floor stock was protected. Said secretary as secretary of the respondent association also wrote said Genesee Pure Food Company a letter protesting against the decline in price; that in answer to this letter said secretary was again informed that the Genesee Pure Food Company did not protect floor stock in the hands of the wholesale grocer against decline in price. That one of the respondent members, on December 13, 1920, wrote the Genesee Pure Food Co., protesting the lack of a guarantee against decline on "Jello," and stating:

We believe the feeling among all jobbers is similar to ours and if you fail to do something for them you will lack the cooperation in the future that you have had in the past.

That a copy of said letter, including the portion quoted, was sent by said respondent member to the secretary of respondent association and bulletined by him for the information of all respondent members.

PAR. 6. That one of respondent members, in a letter to respondent association under date of December 10, 1920, which letter was reproduced by respondent secretary in a bulletin for the entire membership, stressed the importance of the jobbers urging the manufacturers to allow a guarantee against decline and stated:

The Cream-of-Wheat Co., came in line recently and others will do likewise if we keep everlastingly at it.

That in April, 1921, respondent secretary bulletined a member's letter containing the following:

The retail man of the Jello Company called on us and worked our trade not long ago, and he dropped a remark that led the writer to believe that had the wholesale grocers continued requesting his company for the rebate on floor stocks at the time of decline, that they would have received it, due to the fact that the Company was about ready to give into their request. As you know, this has all died down, and we are wondering if in your opinion it would be worth while to start another series of requests for rebate.

The salesman of course, did not say definitely that they would have given rebates, but judging from his remark, the pressure brought against the Genesee people was pretty strong just before the end of the campaign.

That in May, 1921, respondent secretary bulletined a member's letter complaining that the Wm. H. Luden Co., would not guarantee floor stocks on their recent price decline, and stating:

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We think some effort should be put on this matter, the same as there was on Jello, and would be glad to have you mention it in your next bulletin. We are going back after them.

PAR. 7. That in November, 1920, respondent secretary wrote letters to five different soap manufacturers seeking to secure from each the removal of a time limit on their guarantee against decline. Said letters referred to the action of other soap manufacturers in making an unlimited guarantee as a reason why these five should grant the request. The Rub-No-More Co., refused to grant respondent secretary's request, whereupon respondent secretary wrote the Rub-No-More Co., that he would place its reasons for refusal before the members and further stated:

The fact however remains that the time limit guarantee is subject to competitive influences and I respectfully repeat that justified precedent established by several substantial soap manufacturers doing business in this territory, warrants our suggesting for your serious consideration the advisability of rebating the full amount of jobbers stock of your product on hand.

PAR. 8. That previous to December 10, 1920, the said respondent secretary received a communication from one of the members of said respondent association, suggesting that the said secretary prepare a list of manufacturers who guaranteed their proprietary brands against decline in price; and that when said list was so prepared, it be mailed to each member of the respondent association; that the said respondent secretary published said suggestion in the said bulletin under date of December 9th, and in said bulletin also requested that the different members of the respondent association send in a list of manufacturers whose product they handled and which manufacturers guaranteed their proprietary brands against decline in price; that the said secretary also asked the said members of respondent association to send him a list of manufacturers whose goods they handled who did not guarantee their proprietary brands against decline in price. To these requests so published in said bulletin, the said respondent secretary received very few replies; that one member of respondent association, whose name was not disclosed in said bulletin, sent in a list containing thirty-one names of manufacturers who guaranteed their products against decline in price; that the said list was published by said respondent secretary in a bulletin issued December 20, 1920, and when issued, said bulletin was sent to each member of the respondent association, also to each person whose name was on the said respondent secretary's mailing list; that previous to February 18, 1921, said respondent secretary received from one Alvin M. Graves, secretary of the Tri-State Wholesale Grocers' Association, an alphabetically arranged list containing the names of

99 manufacturers who guaranteed their products against decline in price; that said list so received was published in the bulletin issued by said respondent secretary on February 18th, and in said bulletin the said respondent secretary also requested members of the respondent association to check over the said list and notify the said secretary if there were any corrections necessary; that the bulletin containing said list above referred to was sent by said secretary of said respondent association to all the members of said association and to other persons whose names were on the mailing list kept by said respondent secretary; that, although contemplated, no list was prepared or published that gave the names of manufacturers who did not protect their proprietary brands against decline in price; that the names of several manufacturers who did not guarantee against decline were mentioned in bulletins to the membership, with derogatory comment by the various members whose letters were thus bulletined by the Secretary. That some of the bulletins issued by respondent secretary to the membership contained letters in which various members expressed themselves as disposed to push the products which manufacturers guaranteed against decline and to withhold cooperation in the sale of competing products which manufacturers did not guarantee against decline.

PAR. 9. That in December, 1920, a suggestion was made by one of respondent members and bulletined for the information of the membership, to the effect that goods not guaranteed against decline should be sold "at a reasonable price over what it costs us," as distinguished from the replacement cost on a declining market. Within a few days following this suggestion, a decline took place on an article not guaranteed against decline, whereupon, respondent secretary secured from one of his members a statement of what his future price on the goods in question would be, and announced such future price to the membership generally through an association bulletin. This price was higher than the jobbers' selling price contemplated by the manufacturer of the goods. A similar procedure was adopted with regard to another article not guaranteed against decline when the price was reduced by the manufacturer in May, 1921.

PAR. 10. That respondent secretary, in a bulletin to his members dated December 13, 1920, reproduced a letter from a member in which the member stated that guarantee against decline was necessary among other things "to prevent the serious price cutting between jobbers Proprietary Brands." The member's letter also said:

For instance, if the Genesee Pure Food Company had protected the jobber against decline on our floor stock of Jello, we would all have been selling practically at the manufacturers' suggested selling price to the trade, and none of us would have suffered a loss.

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Not having this price protection, Jello has been sold all the way from \$1.20 to \$1.65 per dozen during the past thirty days and today we are all taking a severe loss on what we have on hand due to the manufacturer's recent decline of 90¢ per case.

We need the manufacturer's price guarantee in order to minimize losses and stabilize the market, and every jobber should make a strong plea along that line whenever he has occasion to correspond with them.

PAR. 11. That respondent's acts set forth in the foregoing paragraphs constituted a concerted effort and attempt to coerce or compel manufacturers to guarantee against decline on sales of their commodities to members of the association; that said acts had the capacity and tendency and were calculated to prejudice and injure the business of the manufacturers who did not guarantee their products against decline, to cause a refusal or curtailment of purchases from such manufacturers by the members of the association, and to benefit correspondingly the business of manufacturers who did guarantee their products against decline; that said acts had a dangerous tendency unduly to hinder competition between said two classes of manufacturers in the course of their interstate sales to respondent members; and that said acts had the capacity and tendency and were calculated to lessen substantially price competition among the members of respondent association.

CONCLUSION.

That the practices of the respondents, as set forth in the foregoing modified 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, and oral argument and the Commission having made its findings as to the facts and 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 respondent association, its officers and directors, individually and as representatives of the members, the successors of said officers and directors, and the members, their agents, representatives 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, to guarantee and assure 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:

(a) By the practice of publishing and distributing among the members of respondent association and others, communications and statements which directly or indirectly convey that manufacturers guaranteeing against decline are entitled to receive the cooperation and preferential patronage of members of respondent association or of the jobbers generally.

(b) By the practice of publishing and circulating among the members of respondent association and others, communications and statements which identify manufacturers not guaranteeing against decline and which directly or indirectly convey that such manufacturers are not equally entitled to the cooperation and patronage of members of respondent association or of the jobbers generally.

(c) By the practice of urging and requesting members of respondent association to make concerted protest and solicitation to manufacturers who do not guarantee against decline.

(d) By the practice of directly or indirectly conveying to manufacturers who refuse to guarantee against decline that such refusal would result in a lack of cooperation on the part of respondent jobbers or of jobbers generally.

(e) By the practice of directly or indirectly conveying to respondent members that in correspondence with manufacturers who refuse to guarantee against decline, they suggest that such refusal would result in a lack of cooperation on the part of respondent jobbers or of jobbers generally.

(f) By the practice of suggesting to members of respondent association that in their solicitation of manufacturers for guarantees

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against decline they should urge the point that guarantee against decline is necessary and valuable as a means of protecting respondent members against price competition with each other.

(g) 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 the names and policy of the former to be published and distributed among the members of respondent association and others.

(h) 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, their report in writing stating the manner and form in which this order has been conformed to.

ORDER OF DISMISSAL.

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 upon argument of counsel, and it appearing to the Commission that the respondents, Chesbrough-Moss Company, J. F. Rappel Company, and Mueller-Wild Company, since the issuance of the complaint herein have ceased to function as going concerns and are 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 respondents Chesbrough-Moss Company, J. F. Rappel Company, and Mueller-Wild Company, for the reason that said respondents are no longer functioning as going concerns, but are in fact out of business.

C. N. DELLINGER & CO. ET AL.

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