

Syllabus.

IN THE MATTER OF
MISSOURI-KANSAS WHOLESALE GROCERS'
ASSOCIATION ET AL.

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

Docket 990—May 9, 1925.

SYLLABUS.

Where an association, which included in its membership a large majority of the wholesale grocers located within its territory, and its officers and members; in pursuance of a conspiracy and undertaking to (1) confine the business of manufacturers to what they regarded as the proper channels of distribution, (2) hamper and obstruct the business of a manufacturer, who had become objectionable to them through the inauguration of a policy of selling both to retailers and wholesalers at the same price for equal quantities purchased, (3) increase the business of manufacturers who confined the sale and distribution of their products to the jobber, and (4) hamper and obstruct the business of competing jobbers who were disposed to or did handle the products of the aforesaid manufacturer.

- (a) Urged and incited the members to stand as a unit and refuse longer to handle the products of said manufacturer, and to take on and push the sale of goods made by competing manufacturers who sold exclusively through the jobber, and to make special efforts in behalf of the goods of said last-named manufacturers;
- (b) Concertedly withdrew and withheld patronage from the aforesaid objectionable manufacturer and entered upon a vigorous campaign to replace said manufacturer's products on the retailers' shelves with those of competing manufacturers who announced their continued loyalty to the jobber as their channel of distribution;
- (c) Circulated bulletins among the membership containing communications from members and other jobbers, and bulletins from secretaries of other associations, respectively urging the foregoing course, and stating that the same was being pursued by the jobbers in their territories;
- (d) Called for reports from the members as to whether jobbers in their localities were handling the goods of said objectionable manufacturer;
- (e) Urged cooperation among the members to defeat the sales policy of such manufacturer, as a warning to other manufacturers disposed to adopt a similar policy;
- (f) Abused and ridiculed such manufacturer and jobbers dealing or disposed to deal with it,
- (g) Circulated information among the members to the effect that they were acting and had acted unitedly in refusing to handle the goods of the aforesaid objectionable manufacturer, with the result that thousands of retailers

Complaint.

9 F. T. C.

"who bought in single box lots from wholesale grocers were shut off from supply";

- (h) Urged the members to report for their mutual information the success attending their efforts to supplant the goods of the latter with the goods of those who sold exclusively or chiefly through the jobber;
- (i) Cooperatively solicited assurances from a theretofore loyal manufacturer to the effect that it would remain loyal to the members' contention that it was improper for manufacturers to sell to jobbers and retailers indiscriminately, and gave such manufacturer united assurance of special selling efforts in return for its loyalty, through bulletins urging the members to special selling efforts in behalf of its goods, and otherwise; and
- (j) Induced and attempted to induce so-called loyal manufacturers and others to sever business relations with jobbers who handled the goods of said objectionable manufacturer;

With a dangerous tendency to unduly hamper competition between members, between members and jobbers who desired to or did handle the products of the above-mentioned objectionable manufacturer, between such members and such manufacturer, and between such manufacturer and competing manufacturers:

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. W. N. Todd, president, *Mr. M. A. Christopher*, vice president, and *Mr. Harry E. Sloan*, secretary, of Missouri-Kansas Wholesale Grocers' Association, for respondent association.

Mr. Samuel W. Sawyer, Mr. O. W. Pratt and Mr. Cyrus Crane of Lathrop, Morrow, Fox & Moore of Kansas City, Mo., for respondents Peet Brothers Manufacturing Co. and The Rub-No-More Co.

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 Missouri-Kansas Wholesale Grocers' Association, Kansas City, Mo., its officers, directors and members, Peet Brothers Manufacturing Co., Kansas City, Kans., and The Rub-No-More Co., Fort Wayne, Ind., hereinafter referred to as respondents, have been using and are now 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, Missouri-Kansas Wholesale Grocers' Association, is an unincorporated association composed of wholesale grocers and jobbers of groceries and food products, having their places of business in the States of Missouri and Kansas,

banded together to promote and protect their common interests; and the membership of said association consists of a large proportion of all the individuals, partnerships and corporations engaged in the wholesale grocery business in said States.

PAR. 2. The various members of said respondent association purchase groceries and food products in the several States of the United States other than the States of their respective domiciles and cause same to be transported from and through such other States to and into the States of Missouri and Kansas, as the case may be, to the respective warehouses or places of business of such members, at which points such commodities are thereafter resold by said members severally and when resold are transported into other States of the United States to the purchasers thereof; and that there has been continuously for a period of more than two years last past, and still is, a constant current of trade and commerce, as aforesaid, in groceries and food products dealt in by the various members of said respondent association between the various States of the United States.

PAR. 3. The names and places of residence of the officers and directors of said respondent association are as follows: W. N. Todd, president, Leavenworth, Kans.; Max A. Christopher, vice president, Kansas City, Mo.; George M. Watson, vice president, Salina, Kans.; Harry E. Sloan, secretary-treasurer, Kansas City, Mo.; C. J. Schenecker, St. Joseph, Mo.; C. F. Adams, Chillicothe, Mo.; E. B. Farley, Sedalia, Mo.; Williams F. Crome, Clinton, Mo.; B. W. Melick, St. Joseph, Mo.; J. C. Petro, Hutchinson, Kans.; W. R. Ranney, Arkansas City, Kans.; C. H. Bevis, Wichita, Kans.; F. C. Wood, Wichita, Kans., and M. J. Horan, Atchison, Kans., directors; said officers and directors have been duly and regularly appointed and are named herein as respondents, both individually and as officers, directors and members of said respondent association, charged with and engaged in the management and direction of its affairs, and also as representatives of all the members of said association who together constitute a class too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 4. Respondent, Peet Brothers Manufacturing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal sales office and place of business located in the city of Kansas City, Kans.; said respondent is now and at all times hereinafter mentioned was engaged in the business of manufacturing soap and soap products, and in selling the same throughout many States of the United

Complaint.

9 F. T. C.

States, causing the commodities when so sold to be transported from the point of manufacture in the State of Kansas to purchasers located in other States of the United States, including many of the members of respondent Missouri-Kansas Wholesale Grocers' Association, and there is now and has been at all times hereinafter mentioned a constant current of trade and commerce in said soap and soap products in and among the various States of the United States; the said respondent is now and was at all times hereinafter mentioned a large manufacturer of said commodities, and in the sale and transportation of same from its factories in the State of Kansas to and through other States of the United States the said respondent continuously has been and now is in competition with other individuals, partnerships and corporations similarly engaged in interstate commerce.

PAR. 5. Respondent The Rub-No-More Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, having its principal place of business in the city of Fort Wayne, in the said State; it was at all times hereinafter mentioned and still is engaged in the business of manufacturing soap and soap products and in selling the same throughout numerous States of the United States, causing the products when so sold to be transported from the point of manufacture in the State of Indiana to purchasers located in other States of the United States, including many of the members of respondent Missouri-Kansas Wholesale Grocers' Association; and there is now and has been at all times hereinafter mentioned a constant current of trade and commerce in said soap and soap products manufactured by said respondent among various States of the United States; the said respondent is now and was at all times hereinafter mentioned a large manufacturer of said commodities, and in the sale and transportation of same from its factories in the State of Indiana to and through other States of the United States the said respondent continuously has been and now is in competition with other individuals, partnerships and corporations similarly engaged in interstate commerce.

PAR. 6. The Procter & Gamble Co. is a corporation organized under the laws of the State of Ohio, engaged in the manufacture of soap, soap products and cooking fats at its various factories located in Cincinnati, Ohio, and elsewhere, which it sells and distributes in interstate commerce throughout the various States of the United States through a subsidiary, the Procter & Gamble Distributing Co.; and prior to July 1, 1920, said Procter & Gamble Distributing Co. sold the products of the said Procter & Gamble

Co. chiefly to wholesale grocers throughout the United States, including many of the members of respondent Missouri-Kansas Wholesale Grocers' Association, and discriminated in favor of said wholesale grocers by giving them a lower price than retailers, without regard to the quantity bought by particular purchasers or the cost of selling particular purchasers.

Effective July 1, 1920, said Procter & Gamble Distributing Co. withdrew and discontinued the lower prices which it had given wholesale grocers, regardless of quantity and cost of selling, as aforesaid, and began to quote equal prices to all buyers of equal quantities, regardless of whether said buyers did a wholesale or retail grocery business. Thereafter said Procter & Gamble Distributing Co. sought to sell said products both to wholesale and retail grocers in various States of the United States, including the States of Missouri and Kansas, without discrimination in the prices charged for equal quantities purchased, arranging the prices so that wholesalers purchasing in large quantities might sell to retailers purchasing in small quantities. As a result of the above described change in sales policy and by reason of other facts the Procter & Gamble Distributing Co. became a competitor of the members of respondent Missouri-Kansas Wholesale Grocers' Association for the trade of large retailers handling Procter & Gamble products and the products of respondents Peet Brothers Manufacturing Co. and The Rub-No-More Co.

PAR. 7. Immediately upon the adoption of the aforesaid change in sales policy by the Procter & Gamble Distributing Co. the Missouri-Kansas Wholesale Grocers' Association, through its officers, directors and members, and with the support, assistance and cooperation of respondents Peet Brothers Manufacturing Co. and The Rub-No-More Co. conspired to hamper, obstruct and prevent said Procter & Gamble Distributing Co. from successfully carrying out its lawful competitive policy as described in paragraph 6 hereof, by adopting and using the following described means and methods:

(a) Respondent officers and members held conferences, delivered speeches, conducted discussions and exchanged letters and statements among themselves in which they suggested and urged that the officers and members of respondent Missouri-Kansas Wholesale Grocers' Association should cancel orders previously placed with said Procter & Gamble Distributing Co. and thereafter refuse to purchase any of the products handled by said company for resale to such retail grocers as could not advantageously buy direct from said Procter & Gamble Distributing Co. under the sales policy described in paragraph 6 hereof.

Complaint.

9 F. T. C.

(b) Respondent officers and members held conferences, delivered speeches, conducted discussions, and circulated letters and statements among themselves in which information was given to the effect that the members of respondent Missouri-Kansas Wholesale Grocers' Association had canceled orders previously placed with said Procter & Gamble Distributing Co. and would thereafter refuse to purchase any of the products of said company.

(c) Respondent officers and members of the Missouri-Kansas Wholesale Grocers' Association held conferences, delivered speeches, conducted discussions, and circulated statements among themselves in which information was given to the effect that the wholesale grocers of other States, represented in their respective trade associations, had discontinued and would thereafter refuse to handle Procter & Gamble products.

(d) Respondent members of the Missouri-Kansas Wholesale Grocers' Association thereupon individually but generally refused to purchase and sell the products handled by said Procter & Gamble Distributing Co., relying upon the assurances given and secured through the means described in paragraphs 7a, 7b, and 7c hereof, to the effect that their principal competitors in Missouri and Kansas and near-by States were likewise refusing and would continue to refuse to purchase and sell Procter & Gamble products.

(e) Respondent officers of the Missouri-Kansas Wholesale Grocers' Association invited and secured reports from members of said association and others the names of any members and other wholesale grocers who continued or resumed the handling of Procter & Gamble products.

(f) Respondent members of the Missouri-Kansas Wholesale Grocers' Association used their united influence to induce and persuade other members and wholesale grocers disposed to continue or resume the handling of Procter & Gamble products not to do so but to become or remain loyal to the common purposes and policy described in paragraph d preceding.

(g) Respondent officers and members of the Missouri-Kansas Wholesale Grocers' Association encouraged and urged upon each other that they should make special effort to sell the soap, soap products and cooking fats made by various competitors of the Procter & Gamble Distributing Co., particularly the products of respondent Peet Brothers Manufacturing Co., and to record and report for their mutual information the amount of their sales of said competing products.

(h) Members of respondent association, through their salesmen, gave special cooperation to each other and the salesmen of respondent.

ent Peet Brothers Manufacturing Co. in selling the products of said company to retailers.

(i) Respondent Peet Brothers Manufacturing Co., well knowing that the respondent members of the Missouri-Kansas Wholesale Grocers' Association were endeavoring to prevent wholesale grocers from handling Procter & Gamble products and were making every effort to increase the sales of Peet Brothers products, supported and assisted said members in the said endeavors by threatening to refuse and by refusing to sell its products to wholesale grocers who continued or resumed the handling of Procter & Gamble products, by refusing to fill orders placed by retailers through said wholesale grocers for Peet Brothers products, and by diverting orders for Peet Brothers products which retailers desired filled through said wholesale grocers, to competing wholesalers who were refusing to handle Procter & Gamble products.

(j) Respondent The Rub-No-More Co., well knowing that the respondent members of the Missouri-Kansas Wholesale Grocers' Association were endeavoring to prevent wholesale grocers from handling Procter & Gamble products and were making special effort to increase the sale of competitive products, supported and assisted said members in said endeavors by severing business relations and refusing to sell its products to wholesale grocers who continued or resumed the handling of Procter & Gamble products, by refusing to fill orders placed by retailers through said wholesale grocers for Rub-No-More products, and by diverting orders for Rub-No-More products which retailers desired filled through said wholesale grocers to competing wholesalers who were refusing to handle Procter & Gamble products.

PAR. 8. As a result of the alleged acts and conduct of said respondents, the said Procter & Gamble Distributing Co. has been and now is hampered, hindered, and obstructed in freely selling its said soap, soap products, and cooking fats to the members of the Missouri-Kansas Wholesale Grocers' Association and to other wholesale grocers; and said members and other wholesale grocers are hampered, hindered, and obstructed in freely obtaining supplies of soap and soap products by purchase from the respondents Peet Brothers Manufacturing Co., and The Rub-No-More Co., and in some instances have been entirely deprived of said commodities or compelled to pay therefor prices in excess of those required of and paid by competitors who are members of the Missouri-Kansas Wholesale Grocers' Association and who are not dealing in the products of said Procter & Gamble Co.; and as a further result of respondents' aforesaid organized interference with the channels of

Findings.

9 F. T. C.

wholesale grocery distribution in Missouri, Kansas and near-by States retailers and consumers of the products of Procter & Gamble, Peet Brothers and The Rub-No-More Co. have been inconvenienced and prevented from securing supplies of said products as readily as otherwise; all of which tended and still tends to restrain and divert the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 9. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents 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 respective attorneys, and 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Missouri-Kansas Wholesale Grocers' Association, is now and for more than ten years last has been a voluntary unincorporated association composed of wholesale grocer concerns located at and doing business from various points in the western half of Missouri and throughout the State of Kansas. The principal office of said association is at Kansas City, Mo., where its secretary resides. At the times hereinafter referred to the member-

ship of said association consisted of 75 or more wholesale grocer concerns and represented about 80 per cent of all the wholesale grocers located within the territory from which the membership was drawn.

PAR. 2. The respondent members of said respondent association purchase groceries, food products, and kindred commodities from manufacturers located in various States of the United States other than the States in which the respective members are located, and cause such purchases to be transported from the various States in which manufactured, to the several warehouses and places of business of respondent members within the States of Missouri and Kansas. The goods so transported are sold and delivered by respondent members to retail grocers located in the States of Missouri, Kansas, Oklahoma, Colorado, Arkansas, Iowa, and Nebraska. Respondent members frequently cause goods to be shipped and delivered to retail grocers from the respective places of manufacture of such goods in States other than those in which the respective retail grocers are located. Among the goods which until July, 1920, were the subject of respondent members' commerce as thus described were the products of Proctor & Gamble, well-known manufacturers of soaps, washing powder, and cooking fats, of Cincinnati, Ohio. In the course of their business as aforesaid respondent members are engaged in competition with each other, with other wholesale grocer concerns, and with various manufacturers, for the trade of retail grocers within the territory above described.

PAR. 3. One of the original and continuing purposes of respondent association was to deal collectively with the competition involved in manufacturers who sell direct to retailers and at the same time sell to wholesale grocers. Respondent association operates under a code of ethics or declaration of principles which opposes "improper methods and illegitimate practices." The words quoted were interpreted by respondent secretary as applying to the competition between jobbers and manufacturers. Said respondent secretary was active in carrying out respondent association's various purposes throughout the existence of said association down to the filing of the complaint herein. Prior to July 1, 1920, Procter & Gamble sold its various products to retail grocers within the territory of respondent association exclusively through the jobber, although it was securing orders from retailers for about one-half its business in said territory through its own salesmen and at its own expense. On July 1, 1920, said Procter & Gamble Co. inaugurated a sales policy of selling both to retailers and wholesalers at the same price for equal quantities purchased and established a schedule of prices for both

Findings.

9 F. T. C.

wholesale and retail trade which provided a gross margin or differential between the largest and smallest quantity price about the same as the gross margin previously allowed the jobber. As a result of said change in policy Procter & Gamble became a competitor of respondent jobbers and of jobbers generally for the trade of retail grocers and came into conflict with the respondent association's code of ethics or declaration of principles above described.

PAR. 4. Immediately after Procter & Gamble announced the aforesaid change in selling policy the secretary of respondent association prepared and issued a series of bulletins or circulars to his members calling upon them to refuse longer to handle the products of Procter & Gamble and in one instance stating:

With cooperation we can smother our distinguished antagonist and amply demonstrate to any other manufacturer who may wobble on the proposition that the Wholesale Grocer is in command of the situation.

Respondent secretary urged respondent members to take on and push the sale of goods made by manufacturers who competed with Procter & Gamble and who continued to sell exclusively through the jobber. Respondent secretary incorporated in his bulletins circulated among the membership communications from various members in which said members instructed their salesmen to push the sale of goods made by the manufacturers aforesaid and to urge retailers to buy from wholesale grocer competitors rather than from Procter & Gamble. In a bulletin dated July 18, 1920, respondent secretary reproduced a letter from a large eastern jobber who "stands high in National Association circles" in which it was shown that Procter & Gamble were still tendering orders to the jobber and soliciting the jobbers' trade in less than five box lots. Respondent secretary commented upon this fact in said bulletin as follows:

This to me sounds the high note of the ingenious grandeur of egotism. I can see nothing else to it. Having scourged you, they still expect you to come to heel at their whistle. They seem convinced that they alone can accomplish the feat of carrying water on both shoulders and walking the tight rope. They have wrongly judged the temper of the Wholesale Grocer. He is not as easy as they believe. He will not be content to take single box orders for their products from small dealers or those of limited capital rating and permit P. & G. to gather the cream. They will not act as cat's-paws to rake the chestnuts from the fire for P. & G. or anybody else.

Respondent secretary reproduced in said bulletin a letter from an unnamed jobber refusing Procter & Gamble's invitation to deal with it, stated that his mail was full of similar matter, and further:

You will note that they will claim that "most all jobbers" are accepting their goods and working with them. That is pure bunk and will so be proven. "Let's go."

In a bulletin dated July 20, 1920, respondent secretary quoted letters from various jobbers, one of such letters containing the following:

I have given instructions to have the remnants of their products sold out just as rapidly as possible and when that is completed we will have no more of their stuff in the house. It is very clear to me that they have been expecting the jobber to take care of the "weaklings" while they will take care of the worth-while trade. I think you should rent an additional room to be known as the "Boob's Gallery" and then invite those complying with their ideas to forward their photographs for the newly instituted gallery, but really I do not believe that there would be any large percentage who would come in the list.

Another letter quoted in the last mentioned bulletin contained the following:

We just wish to record ourselves with you as having bid Procter & Gamble a fond and everlasting farewell. Any jobber who respects himself, who longer continues to handle this company's line, is too "lily-livered" to be accepted among legitimate wholesale grocers. The lines are fast being drawn and it does not take a keen observer to properly value the accounts he does business with. I am in hopes that our position will not be one of mild acceptance but that we shall carry on an energetic propaganda resisting all sales of this particular company's soaps.

In a bulletin dated July 23, 1920, respondent secretary described the efforts of Procter & Gamble to induce jobbers to handle Procter & Gamble goods in small quantities and referred to any jobber who would do so as a "Judas Iscariot." Respondent secretary stated further:

Instead of eliminating the jobber as they stated in their "genuine regretful" announcement, they merely cheapen and insult him. In other words, with scant courtesy and meager notice they literally kicked you out the back door. Now they are looking over the field of carnage in an effort to find a few with warped and blunted consciences and who may have had padding in their pants and didn't feel the jolt. Of these they purpose to make "subjobbers" to whom they can now and then throw a crust and pass on their cast-off clothes. Will you fall for it? The thought is ghastly. The fetid odor of such a monstrous proposition is so offensive that I wonder their representatives are treated with common courtesy.

In the last-mentioned bulletin respondent secretary quoted an unnamed jobber who had been solicited by Procter & Gamble as stating:

We certainly hope that the jobbers will have the moral courage and self-respect to tell the P. & G. people to go to, for the very principle involved is in their being forced to handle the retail trade exclusively and alone. If the jobbers work with them on a partial basis, why, then, of course, they will put it over.

Findings.

9 F. T. C.

Respondent secretary reproduced bulletins circulated by the secretaries of other wholesale grocer associations and which stated that the jobbers in their respective territories were refusing to handle Procter & Gamble goods.

In a bulletin to members dated August 10, 1920, respondent secretary referred to Crisco, a product of the Procter & Gamble Co., as an "outlaw" cooking fat and urged the members to push the cooking fats of the Corn Products Refining Co. and other loyal manufacturers in opposition to the cooking fats of Procter & Gamble. In a bulletin of September 1, 1920, respondent secretary stated that Procter & Gamble's continued efforts to sell the jobber had proved unsuccessful and called for reports as to whether any jobber in the territory of the respective members had been induced to handle Procter & Gamble products.

PAR. 5. Immediately subsequent to the circulation of the bulletins hereinbefore described and of others of like import the members of respondent association entirely discontinued purchasing the products of Procter & Gamble and entered upon a vigorous campaign to replace said products on the retailers' shelves with those of competing manufacturers who announced their continued loyalty to the jobber as their channel of distribution. Respondent secretary issued bulletins in which those manufacturers were mentioned favorably, by name in some instances, members were urged to supplant Procter & Gamble's trade with the retailer with the goods of loyal manufacturers, and in one bulletin Procter & Gamble was referred to as "this outlaw who considers the functions of the wholesale grocer unnecessary." Respondent secretary urged the adoption of a system of statistical reports designed to disclose the progress of the campaign to supplant Procter & Gamble goods with those of said loyal manufacturers, said system having originated with a sister association of wholesale grocers. Respondent secretary circulated information in his bulletins to the effect that Procter & Gamble's representatives were being ostracized both commercially and socially by the jobbing trade. During the late months of 1920 and the early months of 1921 respondent secretary circulated information in his bulletins to the effect that the jobbers generally had stood firm in their determination not to handle Procter & Gamble products, that as a result thousands of retailers "who bought in single box lots through wholesale grocers were shut off from supply," and that "here and there they have seduced a jobber."

PAR. 6. Among the manufacturers whose loyalty to the jobber was featured in the bulletins issued by respondent secretary was Peet Brothers Manufacturing Co. of Kansas City, Kans., reputed

and claiming to be the greatest factor in the soap industry next to Procter & Gamble. Peet Brothers products were more generally sold in the territory of respondent association than those of any other soap manufacturer. It had long been the policy of Peet Brothers to sell exclusively through jobbers. Upon the announcement of Procter & Gamble's change in selling policy a conference was held between the officers of Peet Brothers Co. and two of the officers of respondent association, at which conference Peet Brothers Co. renewed its previous assurances of loyalty to the jobber. Samples of Peet Brothers goods were compared with Procter & Gamble products at this conference. Respondent secretary thereupon issued bulletins urging his members to special selling efforts on Peet Brothers goods. Bulletins issued by respondent secretary concerning Procter & Gamble and Peet Brothers came to the attention of Peet Brothers and Peet Brothers bulletins to its salesmen were circulated among respondent members by respondent secretary. In these bulletins Peet Brothers Co. urged its salesmen to make special selling efforts with the jobber and as a part of such efforts to emphasize the loyalty of Peet Brothers to the jobber. Respondent secretary circulated among his members information to the effect that in one instance the salesmen of four competing wholesalers had worked together with a Peet Brothers salesman for the purpose of inducing a retailer to purchase Peet Brothers goods, with the result that they overcame the retailer's reluctance to buy Peet Brothers goods. The business of Peet Brothers received a substantial impetus as the result of respondent members campaign in opposition to Procter & Gamble.

PAR. 7. In the summer and fall of 1921 and at various times in 1922 Procter & Gamble succeeded in inducing four jobbers doing business in respondent association's territory to handle Procter & Gamble goods in small lots on the gross margin represented in the differential between large and small quantity purchases. Prior to Procter & Gamble's change in policy in 1920 these jobbers had handled the products both of Procter & Gamble and of Peet Brothers Co. without objection from the latter and were handling Peet Brothers Co. goods in large quantities at the time they resumed the distribution of Procter & Gamble products. Thereupon Peet Brothers Co. discontinued selling said jobbers and instructed its salesmen to divert orders taken by said salesmen from retailers, regardless of the retailer's preference for said jobbers, to the account of competitive jobbers who were not handling Procter & Gamble goods. Peet Brothers Co. informed competitors of said jobbers that it had discontinued business relations with said jobbers and the business which Peet Brothers discarded thereby was offset by

Findings.

9 F. T. C.

increased purchases made by the competitors of the jobbers cut off. Peet Brothers Co. took full advantage of the war between Procter & Gamble and the wholesalers to entrench itself firmly in the good opinion of the latter.

PAR. 8. Among the manufacturers competing with Procter & Gamble and who had theretofore sold and who continued to sell exclusively through the jobber in the territory of respondent association was The Rub-No-More Co. of Fort Wayne, Ind. The Rub-No-More Co. had a strong following among the jobbers in respondent association's territory and had always been "ethical" in that it accepted the jobbers' contention that a manufacturer ought not to sell direct to the retailer. The territorial representative of The Rub-No-More Co. considered Procter & Gamble's sales policy unethical as well as the action of any jobber who handled Procter & Gamble goods under the new sales policy. Upon being informed by competitors of one of its important jobber customers in Kansas City, Mo., that said customer had taken on the Procter & Gamble line and that Peet Brothers Co. had refused to sell the same concern, The Rub-No-More Co. refused to sell said customer because of its desire to retain and foster the business friendship of the competitors of said jobber customer. The Rub-No-More Co. immediately informed the secretary of respondent association of its action in discontinuing business relations with said customer and also informed the competitors of said customer of its action. Said competitors increased their purchases of Rub-No-More products so that the loss involved in discarding said customer was more than offset. Said competitors secured some of the Rub-No-More business of retailers which had previously gone to the jobber who was cut off by the Rub-No-More Co. and said jobber was thereby forced to buy Rub-No-More products from its competitors to supply its trade.

PAR. 9. Several jobbers in Kansas City, Mo., who were not members of respondent association but who were recipients of respondent secretary's bulletins herein referred to, endeavored to induce a third soap manufacturer to refuse to sell one of the aforesaid four jobbers when said jobber began to handle Procter & Gamble goods, citing the refusal of Peet Brothers Co. to sell said jobber and intimating increased purchases if similar action were taken by said third soap manufacturer.

PAR. 10. The acts of respondent association, its officers and members, as described herein, constituted a conspiracy and combination on the part of concerns normally competitive with each other to confine the interstate business of Procter & Gamble to the channels of distribution considered proper by said association, to hamper and

obstruct the interstate business of Procter & Gamble when it decided to confine its business no longer to said channels, and to increase the business of Peet Brothers Manufacturing Co. and other manufacturers who confined their sales to the channels of distribution favored by said association. The acts of said respondents also constituted a concerted effort and attempt to hamper and obstruct the business of jobbing competitors who were disposed to handle or who did handle Procter & Gamble products. The said acts of said respondent had a dangerous tendency unduly to hinder competition between the members of respondent association, between said members and jobbers who desired to or who did handle Procter & Gamble products, between said members and Procter & Gamble, and between Procter & Gamble and competing manufacturers.

CONCLUSION.

That the practices of respondent association, its officers and members, as set forth in the foregoing findings as to the facts, in the circumstances therein set forth constituted a conspiracy and combination to further 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, 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 respondent association, its officers and members, 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, Missouri-Kansas Wholesale Grocers' Association, its officers and directors, individually and as representatives of the members, the successors of said officers and directors, and the members of said association, their agents, representatives and employees, cease and desist from conspiring, confederating or agreeing among themselves or with others directly or indirectly to hamper and obstruct or hamper or

Order.

O F. T. C

obstruct the interstate business of manufacturers who sell to jobbers and retailers indiscriminately:

1. By the practice of urging and inciting or urging or inciting said members to cancel orders placed with such manufacturers and to stand as a unit in refusing to handle any of the goods of such manufacturers.

2. By the practice of suggesting, urging, and inciting said members to make special cooperative sales effort in favor of so-called loyal manufacturers and in special opposition to manufacturers selling to jobbers and retailers indiscriminately.

3. By the practice of concertedly withdrawing or withholding patronage from manufacturers who sell indiscriminately to jobbers and retailers and concertedly favoring with their patronage manufacturers who sell exclusively or chiefly through the jobber.

4. By the practice of reproducing and circulating for the benefit of the membership generally, bulletins which contain communications from various members and from jobbers belonging to other wholesale grocer associations, urging united action of the sort described in paragraphs 1, 2, and 3 hereof.

5. By the practice of circulating among said members communications from the secretaries of other wholesale grocer associations urging united action of the sort described in paragraphs 1, 2, and 3 hereof, and stating that such united action was being pursued by the jobbers in the territory of other associations.

6. By the practice of calling for reports from said members as to whether any jobber in their respective localities was handling the goods of manufacturers selling to retailers and jobbers indiscriminately.

7. By the practice of urging cooperation among and between said members to defeat the sales policy of manufacturers selling indiscriminately to jobbers and retailers as a warning to other manufacturers disposed to adopt a similar sales policy.

8. By the practice of circulating abuse and ridicule regarding manufacturers who sell indiscriminately to jobbers and retailers and regarding jobbers dealing or disposed to deal with such manufacturers.

9. By the practice of circulating information among said members to the effect that they were acting or had acted unitedly or in individual harmony in refusing to handle the goods of manufacturers selling indiscriminately to jobbers and retailers.

10. By the practice of urging said members to report for their mutual information the degree of success attending their

Order.

to supplant the goods of manufacturers selling indiscriminately to jobbers and retailers with the goods of manufacturers who sell exclusively or chiefly through the jobber.

11. By the practice of cooperatively soliciting assurances from manufacturers that they would remain loyal to the association's contention that it is improper and illegitimate for manufacturers to sell jobbers and retailers indiscriminately, and of giving united assurances to such manufacturers of special selling efforts in return for said loyalty.

12. By the practice of inducing or attempting to induce so-called loyal manufacturers or others to sever business relations with jobbers who handle the goods of manufacturers selling to retailers and jobbers indiscriminately.

It is further ordered, That the respondents 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.

It is further ordered, That the complaint herein be and the same is hereby dismissed as against respondents, Peet Brothers Manufacturing Co. and The Rub-No-More Co.

Complaint.

9 F. T. C.

IN THE MATTER OF
AUSTIN, NICHOLS & COMPANY, INCORPORATED.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 745—May 14, 1925.

SYLLABUS.

Where a corporation engaged in the purchase of grocery products and in the sale thereof to retail dealers; pursuant to the purpose of its organization, acquired, in consideration of the issue of stock and the payment of cash, (a) all the stock, business and assets of a corporation similarly engaged, which it succeeded, and also acquired, in consideration of the payment of cash, (b) all the stock of a corporation engaged in the operation of vegetable canning plants, and in the sale of the product thereof solely to wholesale dealers, (c) 51 per cent of the stock of a corporation engaged in the sale solely to wholesale dealers of fish caught and packed by its subsidiary corporations, (d) a vegetable canning plant theretofore belonging to a corporation engaged in the sale and distribution of meat and meat products and in the operation of branch houses and route cars for the handling of such products, and in the purchase of canned vegetables, fruits, and coffee and sale thereof to retail grocers in competition with said acquiring corporation and its predecessor, together with the right to use on such products the trade-marks and brands theretofore used; and where it further appeared that in said last named transaction the corporation concerned did not turn over to said acquiring corporation any list of customers, but retained its stock of canned goods and coffee and continued to sell the same to its regular trade until in compliance with a consent decree entered into with the Government, it withdrew from the wholesale grocery trade:

Held, That such acquisitions did not result in a substantial lessening of competition, and did not constitute a violation of the provisions of Section 7 of the Act of Congress approved October 15, 1914.

Mr. George R. Jackson and Mr. John M. Burkett for the Commission.

Ehlermann & Smyth of Ehlermann, Smyth & Abbott of New York City, *Mr. Jewel P. Lightfoot* of Chicago, Ill., and *Bloodworth & Fort* and *Mr. William Sabine* of Washington, D. C., for respondent.

COMPLAINT.¹

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Austin, Nichols & Co., Inc., hereinafter referred to as the respondent, has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws

¹ As amended.