

Complaint.

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IN THE MATTER OF
**JOHN MOIR ET AL., DOING BUSINESS UNDER THE
TRADE NAME AND STYLE CHASE & SANBORN.**

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

Docket 1147—May 16, 1925.

SYLLABUS.

Where a firm engaged in the roasting and packing of coffee and in the sale thereof principally to retail grocers; in pursuance of a policy directed to the observance of the minimum prices fixed by them for the sale of their product at retail, which prices they furnished to their customers from time to time,

- (a) Entered into and procured contracts or agreements with dealers binding them to observe such prices;
- (b) Requested their dealer customers to report the names of price cutters or suspected price cutters;
- (c) Sought the cooperation of dealers in making effective their aforesaid policy by cutting off reported price cutters and by informing dealers that reported price cutters who would not give assurance of adherence to the suggested resale prices had been or would be refused further sales;

With the result that competition among retail dealers in the distribution and sale of their product was suppressed, such dealers were constrained to sell said product at the prices fixed and were prevented from selling the same at such lower prices as they might consider warranted by their respective selling costs and by trade conditions generally, and competition in respect of said products was suppressed and hindered:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Elder, Whitman, Weyburn & Crocker of Boston, Mass., for respondents.

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 John Moir, William T. Rich, Harry L. Jones, Fred A. Flood, Warren F. Kimball, Charles R. Butler, Carlton Moseley, and Henry T. Brown, partners doing business under the trade name and style

Chase & Sanborn, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style Chase & Sanborn with their principal office and place of business in the city of Boston, State of Massachusetts, and with a branch place of business in the city of Chicago, State of Illinois. They are engaged in the sale of coffees and teas to wholesale and retail dealers located at points in the various States of the United States. They cause said commodities when so sold to be transported from their aforesaid principal place of business in the city of Boston, Mass., or said branch place of business in the city of Chicago, Ill., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations similarly engaged in the sale of coffees and teas in interstate commerce, and with the trade generally.

PAR. 2. In the conduct of their aforesaid business respondents, during the three years last past, have enforced, and still enforce, a merchandising system adopted by them of fixing and maintaining certain specified uniform prices at which their aforesaid products shall be resold by retail dealers handling same, and respondents enlist and secure the support and cooperation of wholesale and retail dealers and of respondents' officers, agents and employees in enforcing said system. In order to carry out said system respondents during aforesaid time have employed, and still employ, the following, among other means, whereby respondents and those cooperating with them have undertaken to prevent and have prevented retail dealers handling respondents' said products from reselling same at prices less than aforesaid resale prices established by respondents:

(a) Respondents fix uniform minimum prices at which retail dealers handling respondents' said products shall resell same to the purchasing public, and issue and send to dealers handling said products price lists in which said uniform minimum prices are set forth;

(b) Respondents make it generally known to the trade by letters, circulars, salesmen's interviews and by other means that they expect to require retail dealers handling said products to maintain

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and enforce said minimum resale prices and that respondents will refuse to further sell and supply said products to dealers failing to maintain and enforce said prices;

(c) Respondents enter into agreements, understandings and arrangements with dealers for the maintenance by them of said resale prices as a condition of opening accounts with such dealers, or of continuing their supply of said products;

(d) Respondents procure from dealers handling said products reports of the failure of other dealers handling same to observe and maintain said resale prices, and reports of sales by dealers to other dealers who fail to maintain said prices;

(e) Respondents employ their salesmen and other agents and employees to ascertain, investigate and secure information as to the failure of any dealer to observe and maintain said resale prices, and as to the sale of said product by dealers to other dealers who fail to maintain said prices.

(f) Respondents seek and secure the cooperation of dealers handling their said products and of respondents' agents and employees, in preventing dealers who fail to maintain said prices from obtaining said products from other dealers, and to that end have traced, and have caused said persons cooperating with them to trace and identify, through information secured from freight-station agents, draymen and others engaged in transporting said products, and in other ways, dealers from whom other dealers who fail to maintain said prices secure respondents' said products.

(g) Respondents use the information received through the means set out in specifications (d), (e), and (f), or by any other means, to induce and coerce dealers who fail to observe said prices, or who sell to others who fail to observe said prices, to maintain said prices in the future, or to refrain in the future from selling said products to dealers who do not maintain said prices, by exacting promises and assurances from said dealers that they will in future maintain said prices or refrain from so selling, and by threatening said dealers that if they do not maintain said prices or refrain from so selling, respondents will refuse to further supply them with said products.

(h) Respondents refuse to further supply with said products dealers who offend in either of the particulars set out in the preceding specification, unless and until such offending dealers have given satisfactory assurances or undertakings that they will in future observe and maintain said prices, or will refrain from selling said products to dealers who do not observe and maintain said prices.

(i) Respondents use other equivalent cooperative means and methods for the enforcement of said system of resale prices.

As the result of said acts and practices respondents' said resale prices have been and now are, generally maintained.

PAR. 3. The direct effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among retail dealers in the distribution and sale of respondents' products; to constrain said dealers to sell said products at aforesaid prices fixed by respondents and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the advantages in prices and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public 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, John Moir, William T. Rich, Harry L. Jones, Fred A. Flood, Warren F. Kimball, Charles R. Butler, Carlton Moseley, and Henry T. Brown, partners, doing business under the trade name and style Chase & Sanborn, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed their answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents, before W. W. Sheppard, an examiner of the Federal Trade Commission, duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents constitute a partnership doing business under the firm name and style of Chase & Sanborn. Their business is that of manufacturing teas and coffees and the market-

ing thereof throughout the United States. The principal place of business of the respondents is Boston, Mass. Another place of business is Chicago, where two members of the firm are located and who have charge of the western territory. At both Boston and Chicago the respondents operate plants for the roasting or manufacturing of coffee and maintain offices for the sale and distribution thereof throughout the portions of the United States pertaining to these respective locations. The territory of the Boston office reaches to a north and south line drawn through the State of Ohio. The territory of the Chicago office embraces the balance of the United States. The business done by respondents, which is in amount of annual sales approximately \$12,000,000, is about equally divided between these two offices. The amount of respondents' sales to jobbers is negligible. They sell principally to retail grocers and do not sell at all to consumers. They have a large number of different blends of coffee, but their principal blend is known as the "Seal Brand," which brand is the principal one involved in this proceeding.

In the course and conduct of their business, respondents are in competition with other individuals, partnerships and corporations also engaged in the manufacture or roasting of coffee, and who sell and transport same from their respective factories in the United States into and through the various States of the United States. Respondents' "Seal Brand" coffee is roasted, cut and packed in cans of various sizes and generally sold to the retail grocery trade throughout the country.

PAR. 2. Respondents do not publish or circulate any price lists or catalogues specifying the retail or consumers' prices. They do, however, from time to time, with the changes in the coffee market, furnish their customers with prices at which their products and especially the "Seal Brand" coffee should be sold, and insist that these prices shall be maintained, and such prices do generally prevail. Certain exhibits in the record are indicative of respondents' manner of suggesting to their customers the retail prices to be charged. Under date of October 27, 1921, respondents wrote to a prospective customer, the Piggly Wiggly Stores (Inc.), of Memphis, Tenn., requesting that the customer furnish the address of each one of its stores giving the following reason for making this request:

We are obliged to make this request for there are certain stores known as Piggly Wiggly stores where our principles of business prevent us from selling owing to the unwillingness of their managers to maintain the price that is fair and equitable to other grocery store competition. (Com. Ex. No. 1.)¹

¹ Exhibits not published.

Under date of January 26, 1922, respondents wrote to a customer at Topeka, Kans., as follows:

You will, we are sure, readily concede the necessity of their being a uniform retail selling price on any commodity as is in such demand as our Seal Brand coffee if the interests of the dealer and consumer alike are to be protected. * * * For this reason we feel as outlined by Mr. Courtney a minimum of 43 cents per pound for Seal Brand will be a fair basis on present cost. * * * In view of the situation we have taken this up to express our feeling on the subject frankly and are writing to receive your assurance of cooperation in maintaining this minimum price in the future, making same immediately effective. (Com. Ex. No. 43.)

PAR. 3. Respondents, in order that their suggested retail prices shall be maintained, have entered into written contracts with a large number of their dealers for the maintenance of same and have secured from their dealers quite generally agreements, promises and assurances to observe the retail prices, many of which were given as condition of a further supply of coffee by the respondents to such dealers. Respondents, writing to their salesman covering the Kansas and Missouri territory under date of July 14, 1921, report a complaint made by a customer at Topeka in reference to price at which respondents' coffee is being sold at Topeka and says:

We have replied as per copy herewith and leave you to look into the matter when next in Topeka. If it is true that the price is being lowered to 40 cents, we hope you will take a firm stand with those who are cutting prices and arrange with all merchants in Topeka to maintain a minimum price of 45 cents. We consider it very important that the retail price on "Seal Brand" should be maintained at a point that will afford the merchant a legitimate profit. (Com. Ex. No. 19.)

Another letter written to the same salesman reads as follows:

We quote an inquiry just at hand from the Whittelsey Merc. Co., 204 Kansas Ave., Topeka, Kansas:

"We would like to handle your 'Seal Brand' coffee and will maintain any reasonable price which you may set.

"Kindly let us hear from you."

Under the circumstances would you like us to offer them the sale of "Seal Brand" and if so what retail price shall we set? If you can take the matter up with them personally, this, of course, will be desirable. (Com. Ex. No. 13.)

Upon Commission's Exhibit No. 13 appears the following notation made by the salesman to whom it was addressed: "In regard to above I will see these people. They are cutters and it is a question as to selling."

PAR. 4. That the respondents arrive at definite understandings with their customers as to the prices to be charged by the latter, is shown by a large number of exhibits, among others Commission's Exhibits 15 and 16. Commission's Exhibit No. 15 is a letter from the salesman at Kansas City, making inquiry as follows:

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The Piggly Wiggly Companies are contemplating opening a number of stores in Kansas City. I would like to know on what basis you sell them in Chicago as regards retail prices.

Respondents replied to this inquiry as follows:

Relative to the Piggly Wiggly Company—here in Chicago we sell them with a positive and clear-cut understanding that they are not to advertise our coffee or tea in any way whatever and that they will sell Seal Brand for not less than three (3¢) cents below the selling price that is generally quoted by other stores.

For instance, they are now retailing Seal Brand coffee at 42¢ while in practically all other stores in Chicago it is sold at 45¢. • • •

A very definite case of an agreement by a customer to observe the price suggested by respondents as a condition of the filling of a pending order appears in certain correspondence between respondents and their agent at Kansas City. Respondents' Exhibit No. 35, being a letter written by the respondents to said agent, reads:

This is merely to serve as a reminder for you to advise us as promptly as possible concerning the order that is being held from The Henry Schoenfeld Co., Kansas City.

To which the agent replied: "They agree to 42 cents selling price and I am instructing Transfer Co. to deliver." The testimony of the sales manager of respondents at Chicago developed that an order of the Schoenfeld Co. was being held up by the Chicago office awaiting definite assurance that the minimum retail selling prices would be maintained.

Another instance of the holding up of an order pending the assurance on the part of the customer that a certain minimum retail price would be observed, is shown by certain correspondence between the respondents and William Green & Son, Topeka, Kans. Under date of January 26, 1922, respondents wrote Green & Son suggesting a minimum selling price of 43 cents per pound and asking Green & Son for an assurance of their cooperation in maintaining this minimum price, adding to this request, "We are very desirous of continuing the pleasant business relations with you, and hoping to hear from you favorably by return mail, we remain." Under date of January 28, 1922, respondents wired William Green & Son as follows:

That we may give your order prompt attention suggest replying our letter 28th by wire our expense.

After some further correspondence, Green & Son acceded to the demands of respondents for its assurance of cooperation in maintaining suggested retail prices in the following language:

Replying to your letter of January 30th.

From now on we will sell Seal Brand coffee at the following prices:

1 pound cans-----	\$0. 43
2 pound cans-----	. 85
3 pound cans-----	1. 25
5 pound cans-----	2. 00

Com. Ex. No. 47.

These were the prices suggested by respondents.

PAR. 5. In April of 1921 respondents entered upon an active campaign to secure uniform retail prices in the State of Michigan, where it appears there had been considerable cutting. Before the inauguration of this campaign, it appears respondents through their agent in the State of Michigan had made an unsuccessful effort to obtain a uniformity of retail prices charged by their customers, by means of oral agreements or promises and the cooperation on the part of the dealers by the reporting of names of other dealers cutting prices. On April 2, 1921, Mr. H. T. Chase, respondents' salesman for the Michigan territory, wrote the Chicago office as follows:

I have again called upon the price-cutting culprits in Lansing, Mich., and they have promised not to do so again. I have requested each one to send us any price-cutting ads. that appear in the local papers. (Com. Ex. No. 50.)

It appears, however, that price cutting at Lansing, Mich., still continued and as a result the respondents conceived a plan of requiring from all of their customers at Lansing written promises to observe 42 cents as a minimum price. This was brought about by sending to all of its Lansing customers, some 53 in number, an identical letter reading as follows:

GENTLEMEN: You will, we are sure, readily concede the necessity of there being a uniform selling price on any commodity that is in such general demand as our "Seal Brand" coffee if the interests of the dealer and consumer alike are to be protected.

There has been a great deal of price cutting in Lansing of late and accordingly we feel that the situation has reached a point where we ought to acquaint our customers with our views on this subject and receive in return an assurance of cooperation from each one in order that "Seal Brand" coffee may continue to afford the merchant a legitimate profit and at the same time prove a good value to the consumer.

For this reason we feel that on the present basis of cost a fair retail price for "Seal Brand" would be a minimum of 42¢ per pound and there are many stores who should have 45¢. Certainly at 42¢ the margin of profit is close enough and no fair-minded consumer would feel that they were being overcharged when asked 42¢ to 45¢ for "Seal Brand."

In view of the fact that there have been many different prices quoted of late we have taken this opportunity to express our feeling on the subject frankly and are writing to receive your assurance of cooperation in maintaining this minimum price in the future, making same immediately effective if you have been quoting on a lower basis.

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We are very desirous of continuing our pleasant business relations with you and hope to hear from you favorably by return mail.

Yours very truly,

CHASE & SANBORN.

P. S.—This letter is being mailed to all our customers in Lansing. (Com. Ex. No. 63.)

With this letter was inclosed a postal card for the signature of the customer, reading as follows:

We will be glad to cooperate with you making our *minimum NOT LESS THAN 42¢* on "Seal Brand" coffee.

Sign here-----

As appears from the testimony of the respondents' general sales manager, all of the Lansing customers responded by signing and returning this postal card. Later, on October 4, 1921, respondents sent an identical letter, practically in the same language, to all of their customers at Pontiac, Mich., 12 in number. All of them responded by signing and returning the postal card. To one who did not promptly respond, respondents telegraphed as follows:

Unable to deliver your order for Seal Brand coffee without assurance of your cooperation in maintaining minimum retail price of forty-two cents. Hope you will lend us this assistance in stabilizing the local situation. Wire our expense.

Respondents apparently having had little success in securing the cooperation of its dealers at Flint, Mich., in adhering to the suggested prices, pursued the same method of procuring promises in writing as theretofore pursued at Lansing and Pontiac. This method had by this time become known as the "Lansing Treatment." Respondents' agent for the Michigan territory, Mr. H. T. Chase, wrote respondents under date of November 18, 1921:

Zeitner gave me to understand they would not sell Seal below 42¢.

However I have very little confidence in the *verbal* promise of most of these firms. The thing to do is to secure the promise in writing and then hold them to.

You will remember I wrote suggesting that we give Flint, the *Lansing Treatment*.

Signed H. T. C.

(Com. Exs. 103-105.)

To which respondents replied:

In accordance with your suggestion of November 17th, we will give our customers at Flint the "Lansing Treatment." (Com. Ex. No. 105.)

Thereupon an identical letter (Com. Ex. No. 110) was sent, accompanied by a postal card to be signed and returned, to all customers at Flint, some 43 in number. Practically all of the customers at Flint signed and returned the postal card. The so-called Lansing

Treatment was further applied at Battle Creek and at Detroit, at which latter place respondents had customers, which, according to the evidence, certainly exceeded 100 in number. Favorable responses were generally made to the identical letters and the postal cards returned signed by the customers. During the period commencing in July of 1921 and ending in the early part of 1924, respondents sold the Seal Brand coffee to dealers at Detroit, Flint, Lansing, Pontiac and Battle Creek, Mich., only on assurances given by such dealers that they would maintain a minimum price specified by respondents.

PAR. 6. Respondents have received from dealers many complaints that other dealers were cutting prices and have requested dealers to send such complaints to them and also any advertisements coming to their knowledge containing cut prices. On February 20, 1922, respondents sent a fast telegram to a customer in Flint, Mich., as follows:

Wire name of stores mentioned in your letter seventeenth selling Seal less than 42¢ that we may close relations with them. (Com. Ex. No. 131.)

The respondents, as indicated by many other exhibits similar to the one last above quoted, gave their customers to understand that they welcomed reports of price cutting and would investigate same, and if upon investigation the alleged price cutter was found guilty they would cease doing business with him.

PAR. 7. Exhibits and oral testimony thus far referred to pertain particularly to respondents' Chicago office. The record discloses very little price cutting in the territory covered by the Boston office, and the statement of the sales manager of the Boston office, who testified on the stand, is to the effect that the Boston office had very little trouble with price cutting. The testimony of this witness in reference to the activities of the Boston office is in effect, and the Commission so finds, that reports made by dealers of price cutting on the part of other dealers were referred to the local salesman who personally interviewed the alleged price cutter in an effort to procure his adherence to the resale price suggested by the respondent, and if the price cutter persisted in cutting prices, respondents refused to supply him further.

PAR. 8. Respondents fix minimum prices at which their products shall be retailed and insist upon the observance of such prices by their dealers, and to that end procure from their dealers written contracts, agreements, promises and understandings obligating them to observe such specified prices.

Respondents seek the cooperation of their customers in the detection of any variations from the specified prices and to that end

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solicit and procure from dealers reports of price cutting on the part of other dealers, and hold themselves out as ready and willing to investigate all such reports and to endeavor to procure the maintenance of the specified prices by such reported dealers. Their policy and practice is to investigate all such reports and to refuse further shipments to a dealer found by them to be cutting prices unless such dealer gives satisfactory assurances for the future observance of same.

PAR. 9. The direct effect and result of above alleged acts and practices of respondents in cooperating with their dealers has been and now is to suppress competition among retail dealers in the distribution and sale of respondents' products and to constrain such dealers to sell said products at prices fixed by respondents, thereby preventing such dealers from selling respondents' products at such lower prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions generally and thus suppressing and hindering competition, in respect to respondents' products, in interstate commerce.

CONCLUSION.

That the practices of respondents under the conditions and circumstances herein set forth are unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, John Moir, William T. Rich, Harry L. Jones, Fred A. Flood, Warren F. Kimball, Charles R. Butler, Carlton Moseley, and Henry T. Brown, partners, doing business under the trade name and style Chase & Sanborn, their officers, agents, representatives, servants, and employees, cease and desist from:

(1) entering into contracts, agreements or understandings with dealers, or any of them, that respondent's products are to be resold by such dealers at prices specified or fixed by respondents;

(2) procuring either directly or indirectly from its dealers promises or assurances that the prices fixed by respondents will be observed by such dealers;

(3) requesting their dealers to report the names of other dealers who do not maintain respondents' resale prices, or who are suspected of not maintaining the same;

(4) seeking the cooperation of dealers in making effective their price maintenance policy, by manifesting to dealers an intention to act upon reports sent in by them of variations from the suggested prices, by the elimination of the price cutter or by informing dealers that price cutters reported who would not give assurance of adherence to the suggested resale prices had been or would be refused further sales.

It is further ordered, That the respondents, John Moir, William T. Rich, Harry L. Jones, Fred A. Flood, Warren F. Kimball, Charles R. Butler, Carlton Moseley, and Henry T. Brown, partners, doing business under the trade name and style Chase & Sanborn, shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

A. SINGER AND CHARLES SCHAFFER, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE CALIFORNIA GRAPE GROWERS EXCHANGE.

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

Docket 1237—May 29, 1925.

SYLLABUS.

Where a cooperative, nonprofit corporation engaged as the California Grape Growers Exchange in marketing the crops of some 600 California grape grower members; and thereafter a firm engaged in competition therewith in the sale of California and other grapes on and near the Atlantic seaboard, under the same name, with the result that purchasers and prospective purchasers were misled in reference to the identity of the two concerns and the trade and public were induced to purchase its products as and for those of the senior organization:

Held, That such appropriation of the name of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. T. John Butler for the Commission.

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 A. Singer and Charles Schaffer, partners doing business under the trade name and style California Grape Growers Exchange, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style California Grape Growers Exchange, with their place of business in the City and State of New York. They are, and for about one year last past have been, under said name, engaged in the business of selling California grapes in carload lots to purchasers located in various States of the United States, and for the most part in States on the Atlantic seaboard and north of the State of Maryland. Respondents' method of doing business is to obtain contracts for California grapes in carload lots and other large quantities, and thereafter to fill such orders by purchasing grapes in the State of California and causing the same to be trans-