

Syllabus.

IN THE MATTER OF
ISADOR SOMMERFELD, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF DUBINER & SOMMER-
FELD.

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

Docket 1303—July 17, 1925.

SYLLABUS.

Where it had long been considered by many that tobacco grown on the Island of Cuba and known as "Havana Tobacco" was superior to tobacco grown elsewhere for the manufacture of cigars, that the choicest Havana tobacco was grown in that area of Cuba known as Vuelta Abajo, and that the appearance of the name "Garcia" in connection with cigars indicated that said cigars were made by manufacturers of Cuban nationality or descent of that name, were composed of Cuban grown tobacco exclusively, and were superior to those made by many other manufacturers and to cigars composed in whole or in part of tobacco grown elsewhere, and many of the public had become accustomed to calling for such cigars either by the name "Garcia" alone or in combination with the remainder of the name of a manufacturer of that surname; and thereafter an individual having no one so named connected with his concern, and engaged in the manufacture in the United States of cigars containing no tobacco grown in Cuba, and in the sale thereof;

Placed on his cigar boxes and cigar bands the words "Havana," "Vuelta Abajo" and "Garcia," and on the former the name "M Garcia y Ca." as the name of the manufacturer thereof; and also labels displaying an outline map of the Island of Cuba, and inscriptions in the Spanish language solely, to the effect that the cigars therein contained were of the finest Vuelta Abajo tobacco, guaranteed to be the best Havana tobacco, and that anyone representing the composition thereof to the contrary would be prosecuted to the fullest extent of the law, and furthermore displaying illustrations of Spanish scenes and persons, and of medals such as are customarily awarded to manufacturers or dealers for the exceptional quality of their products, notwithstanding the fact that said individual had never received any such medals;

With the intent and effect of misleading and deceiving many of the trade and purchasing public into believing that said cigars were an imported product, made of choicest Havana tobacco exclusively by such a manufacturer as above indicated, and of the finest quality; and of thereby inducing the purchase thereof in preference to products of competitors entitled to such names, and in preference to other products not so misrepresented:

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

Mr. Edward E. Reardon for the Commission.

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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 Isador Sommerfeld, hereinafter referred to as respondent, an individual doing business under the trade name and style of Dubiner & Sommerfeld, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and for a number of years immediately prior to the date hereof, has been engaged in the business of manufacturing and selling cigars, with a principal place of business in the City of New York, State of New York. Respondent causes, and during the times above referred to has caused, the cigars sold by him to be packed for display and resale to the members of the public who purchase cigars for consumption, in and from wooden boxes or other containers and to be transported to individuals, firms and corporations, wholesale and retail dealers, the purchasers thereof, from his said place of business to, into, and through the District of Columbia and various States of the United States other than the State of origin of the shipment of the cigars.

During the times above mentioned, other individuals, firms and corporations have been, and now are, engaged in manufacturing and selling cigars packed for display and resale in and from wooden boxes or other containers, and who cause and have caused the same, when sold by them, to be transported from without the District of Columbia to the purchasers, individuals, firms and corporations, wholesale and retail dealers, located in the District of Columbia and in various States of the United States, other than in the State of origin of the shipment, and including those States into which, from other States than those in which his shipments originate, the respondent causes aid has caused his said cigars to be transported.

The respondent has been during the said times, and now is in competition in commerce with the above individuals, firms and corporations, in the sale of his said cigars.

PAR. 2. For many years prior to the date hereof, and ever since tobacco has been a commercial export product of the Island of Cuba, the term "Havana" tobacco, has meant and continues to mean tobacco of Cuban growth to the cigar tobacco trade, the cigar trade and the cigar purchasing public of the United States, many of whom have during said times considered and continue to consider

Cuban grown or "Havana" tobacco superior in quality, for the manufacture of cigars to be sold and consumed in the United States, to tobacco grown elsewhere. Many of the said trade and public have also during said times considered and continue to believe that cigars made in the United States, for sale and consumption there, of Cuban tobacco, or cigars made of such tobacco in Cuba for sale and consumption in the United States, are likewise superior in quality to cigars made of tobacco grown elsewhere.

PAR. 3. Vuelta Abajo is the name of an area or district in the Island of Cuba, a part of which is in the Province of Pinar del Rio, and in which tobacco is grown which is and has been considered, during the times above referred to, by many of the said tobacco and cigar trade and public, to be of a higher and more desirable quality for use in the manufacture of cigars for sale and consumption in the United States than tobacco grown, not only in countries other than Cuba, but even of a higher and more desirable quality for such purpose than any tobacco grown elsewhere on the Island of Cuba.

Likewise many of the said tobacco and cigar trade and of the said public have also considered during said times, and still believe, that cigars made in Cuba for sale and consumption in the United States of tobacco grown in Cuba either wholly or in part in said Vuelta Abajo district, or cigars made in the United States for sale and consumption there, of tobacco grown in Cuba, either wholly or in part in said Vuelta Abajo district, are and have been superior in quality to cigars made wholly of tobacco grown outside of said district. To the said trade and public Vuelta Abajo tobacco is the most famous tobacco in the world that is used in the manufacture of cigars.

PAR. 4. For a long period of years prior to and at the time respondent engaged in his said business, cigars made wholly of Cuban tobacco were made in Cuba and in the United States for sale and consumption in the United States by manufacturers whose surname was "Garcia" and who, respectively, used and displayed and still use and display their said surname either alone or in combination with the rest of their name or with other words on the bands of the cigars, on the said boxes or containers and on labels thereon.

For a long time prior to the use of the name "Garcia" by the respondent as hereinafter described, many in the said trade and many of the said public, became accustomed to believe and still believe that cigars in connection with the sale of which the name "Garcia" so appeared, were made by manufacturers having that name, of Cuban nationality and of Cuban grown tobacco exclusively and that they were and are of a quality superior to cigars made by many other manufacturers and of tobacco wholly or in part grown else-

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where, and in purchasing cigars became accustomed to and still call for them either by the name "Garcia" alone or in combination with the rest of the name of one of the manufacturers of that surname, and the said manufacturers whose surname is or was "Garcia" have during said times gained a valuable interest and good will in said word when used in connection with the manufacture and sale of cigars in the United States.

PAR. 5. Respondent has caused and still causes the words "Havana," "Vuelta Abajo" and "Garcia" either alone or in combination with one or more other words to be placed on his said cigar boxes or containers and on the labels on said boxes or containers, and the word "Garcia" to be placed on the bands of the cigars made and sold by him.

Respondent has caused and still causes the name M. Garcia y Ca., purporting to be the trade name of an individual or the name of a firm or corporation to be placed on the said boxes or containers of the said cigars as the manufacturer of said cigars.

Respondent causes and has caused certain labels to be placed on the boxes or containers of his said cigars, carrying the outline map of the Island of Cuba and certain inscriptions in the Spanish language that the cigars contained in the said boxes are and were made of the best Vuelta Abajo tobacco and that the tobacco contained in them was guaranteed to be of the best Havana tobacco and that anyone representing to the contrary would be prosecuted to the fullest extent of the law. Respondent during said times has placed labels containing only Spanish inscriptions and Spanish pictures or illustrations on the boxes or containers of his said cigars. Pictures or illustrations of medals, such as are or have been awarded by governments, trade associations, etc., to manufacturers as prizes, decorations or honors for the exceptional qualities of their products, have been and are caused by respondent to be placed on the labels of the boxes or containers of his said cigars.

PAR. 6. The said cigars made and sold by the respondent have never at any time contained more than a very small amount of Cuban grown tobacco, and during most the aforesaid time they have contained no Cuban grown tobacco.

Neither the respondent nor anyone connected with the said business has or ever had the name "Garcia" as part of his name, and the name M. Garcia y Ca. is fictitious and does not represent any individual, firm or corporation engaged in the manufacture of respondent's cigars. Respondent has caused the said words "Havana," "Vuelta Abajo" and "Garcia" and the said name "M. Garcia y Ca." to be used on the boxes or containers and labels thereof, and on the bands of his cigars aforesaid, in order to compete with the long established

concerns having the name "Garcia" or the right to use it, who are engaged in the manufacture and sale of cigars, and to divert the latter's trade to respondent by confusing the identity of the products of both, and leading purchasers to buy those of respondent for those of the said established concerns. Respondent chose the names "Garcia" and "M. Garcia y Ca." unnecessarily and for the purpose of unfair competition with those lawfully entitled to use the name "Garcia."

During the aforesaid time, the name M. Garcia y Ca. used by respondent, as aforesaid, was and is fictitious and by his said use of the same, respondent knowingly, falsely and unlawfully represents and has represented to the said trade and public that his said cigars are made by a business concern properly using the name of "Garcia." By the use of the word "Garcia" alone or with other words as aforesaid respondent knowingly, falsely and unlawfully represents to the said trade and public that his cigars are made by manufacturers having that name, and that they are made of Havana tobacco.

By the use of the said words Havana and Vuelta Abajo, respondent knowingly, falsely and unlawfully represents and has represented to the said trade and public that his said cigars were made of Havana tobacco and either partly or wholly of tobacco grown in the district of Vuelta Abajo.

Respondent has knowingly and falsely represented and guaranteed to the said trade and public by the labels that the said cigars are not only of Havana tobacco but are of the best Havana tobacco from the district of Vuelta Abajo, and has knowingly and fraudulently used the aforesaid labels containing only Spanish inscriptions, pictures and illustrations in further effort and with intent to deceive and defraud the trade and members of the public into the belief that his said cigars were and are made of Havana tobacco and have the qualities characteristic of such cigars.

PAR. 7. The acts and practices of respondent, all hereinbefore set out, have the capacity and tendency to and have misled, and deceived many of the trade and consuming public into the belief that respondent's cigars are manufactured by an individual, firm or corporation named M. Garcia y Ca.; that the manufacturer thereof has the name or the right to use the name "Garcia" in connection with the manufacture and sale of cigars; that the tobacco composing his said cigars is Havana tobacco either wholly or in part from the said district of Vuelta Abajo, and that they are made in and imported from Cuba to the United States.

PAR. 8. Among the individuals, firms or corporations referred to in paragraph 1 hereof, who are and have been in competition with the respondent, are some who manufacture, and sell cigars made of

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tobacco, part of which only is grown in Cuba, or of tobacco grown wholly elsewhere than in Cuba, and who are not branding or labeling the cigars made by them or the containers thereof with or under the words, "Havana," "Vuelta Abajo" or "Garcia."

Among the individuals, firms or corporations referred to in said paragraph 1 are some engaged in the manufacture and sale, in commerce, of cigars made wholly of tobacco grown in Cuba, either wholly or in part from the district of Vuelta Abajo, who are properly labeling, branding and advertising cigars made by them under the name, brand or labels, "Garcia," "Havana" and "Vuelta Abajo."

PAR. 9. The above alleged acts and things done by respondent are each and all to the prejudice of the public and respondent's 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Isador Sommerfeld, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent not having filed an answer herein, and having stipulated and agreed that a statement of facts signed and executed by the respondent and by W. H. Fuller, chief counsel of the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding, and shall be taken by the Federal Trade Commission as such and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said statement of facts to make its findings as to the facts and conclusions and enter its order disposing of the proceeding.

And thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS.

Respondent is, and for a number of years immediately prior to April 9, 1925, has been, engaged in the business of manufacturing and selling cigars, with his principal place of business in the City, County, and State of New York. Respondent has caused,

during the times above referred to, cigars sold by him to be packed for display and resale to the members of the public who purchase cigars for consumption in and from wooden boxes and other containers, and to be transported to individuals, firms and corporations, wholesale and retail dealers, the purchasers thereof, from his said place of business to, into and through the District of Columbia and various States of the United States other than the State of New York.

During the times above mentioned and referred to, other individuals, firms and corporations have been and now are engaged in manufacturing and selling cigars packed for resale in wooden boxes and other containers, and who cause and have caused the same, when sold by them, to be transported from without the District of Columbia to the purchasers, individuals, firms and corporations, wholesale and retail dealers located in the District of Columbia and in various States of the United States other than in the State of origin of the shipment, and including those States into which from other States the respondent causes and has caused his said cigars to be transported.

The respondent has been during the said times, and now is, in competition in commerce with the above individuals, firms and corporations in the sale of his said cigars.

During the times above mentioned and referred to, and ever since tobacco has been a commercial export product of the Island of Cuba, the term "Havana Tobacco" has meant and continues to mean tobacco grown on the Island of Cuba to the cigar tobacco trade, the cigar trade and the cigar purchasing public of the United States, many of whom have, during said times believed and now believe Havana tobacco grown on the Island of Cuba to be superior in quality for the manufacture of cigars to be sold and consumed in the United States, to tobacco grown elsewhere. Many of the said trade and public have also, during said times, believed and now believe, that cigars made of Havana tobacco are superior in quality to cigars made of tobacco grown elsewhere.

Vuelta Abajo is the name of the area or district in the Island of Cuba in which tobacco is grown which was believed during the times above referred to, and is now believed by the said tobacco and cigar trade and the said public to be of a higher and more desirable quality for use in the manufacture of cigars for sale and consumption in the United States than tobacco grown, not only in other countries than Cuba, but of a higher and more desirable quality for such purposes than any tobacco grown elsewhere on the Island of Cuba.

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For a long period of years immediately prior to the time respondent engaged in said business, cigars made wholly of Cuban tobacco were and now are made in Cuba and in the United States for sale and consumption in the United States by manufacturers whose surname was "Garcia," and who respectively used and displayed, and still use and display, the said surname, either alone or in combination with the rest of their name, or with other words, on the bands of their cigars, on the boxes or containers thereof, and on labels used in connection with the sale thereof.

For many years prior to the use of the name "Garcia" by the respondent, many persons in the said cigar and tobacco trade, and many of the public purchasing cigars for consumption, believed and still believe that cigars in connection with the sale of which the name "Garcia" so appeared or appears, were or are made by manufacturers named "Garcia," and of Cuban nationality or descent, and of Cuban grown tobacco exclusively, and that said cigars were and are of a quality superior to those made by many other manufacturers, and superior in quality to cigars made wholly or in part of tobacco grown elsewhere than on the Island of Cuba, and in purchasing such cigars became accustomed to and still call for them either by the name "Garcia" alone, or in combination with the remainder of the name of a manufacturer of that surname.

Respondent has caused the words "Havana", "Vuelta Abajo" and "Garcia" to be placed on his cigar boxes or containers and on the bands of cigars made and sold by him.

Respondent has caused the name "M. Garcia y Ca." to be placed on the boxes or containers of the cigars manufactured by him and purporting to be the name of the manufacturer of the cigars made by respondent.

Respondent has caused certain labels carrying an outline map of the Island of Cuba and certain inscriptions in the Spanish language to be placed on the boxes or containers of his said cigars. The said inscriptions were to the effect that cigars contained in the said boxes were made of the finest Vuelta Abajo tobacco, and that the tobacco in the cigars was guaranteed to be of the best Havana tobacco, and the said inscriptions stated that anyone representing the composition of the said cigars to be to the contrary would be prosecuted to the fullest extent of the law.

Respondent has placed labels containing only inscriptions in the Spanish language on his cigar boxes or containers, and has also placed thereon pictures or illustrations of Spanish scenes and persons, on his said cigar boxes or containers. Respondent has placed on his said cigar boxes pictures or illustrations of medals, such as are or

have been awarded at world's fairs or conventions, by governments or ruling members thereof or by manufacturers, trade associations, or others, throughout the world, to manufacturers or dealers as prizes, decorations or honors for the exceptional quality of their products.

The cigars made and sold by the respondent have never at any time contained any tobacco grown on the Island of Cuba.

No one of the name "Garcia" and no firm named "M. Garcia y Ca." is or has been connected with the manufacture of cigars made or sold by the respondent during the times above mentioned and referred to.

The respondent has not received any medal or medals from any person or association on account of cigars manufactured by him.

Among the individuals, firms and corporations referred to above who are and have been in competition with the respondent are some whose names are not "Garcia," and some who manufacture and sell cigars made of tobacco part of which, only, is grown in Cuba, or of tobacco grown elsewhere than in Cuba, and who are not branding or labeling the cigars made by them, or the containers thereof, with the words "Havana," "Vuelta Abajo," or "Garcia."

The said name "M. Garcia y Ca." is fictitious and respondent chose the names "Garcia" and "M. Garcia y Ca." unnecessarily, and used the same and the said outline map, inscriptions, illustrations, pictures and medals in connection with the manufacture and sale of his said cigars for the purpose of misleading and deceiving his customers and the members of the public purchasing cigars for consumption into the belief that his said cigars were the product of a manufacturer named "Garcia," were imported cigars, and were made of Havana tobacco exclusively and of the finest quality and for the purpose of assisting in selling his said cigars in competition with those manufacturers lawfully entitled to use the name "Garcia," with those engaged in making and selling cigars composed wholly of Havana tobacco and also with those making and selling cigars composed of domestic tobacco or only partly of Havana tobacco and who advertise, describe and label their cigars truthfully as to the tobacco of which they are made.

The use of the terms or words "Havana" and "Vuelta Abajo" by respondent on the labels on the containers of said cigars, in connection with their manufacture and sale as above described, or in other advertising referring thereto, was fraudulent and misleading and had the tendency and capacity to, and did, mislead and deceive many of the said cigar and tobacco trade and members of the public purchasing cigars for consumption into believing that respondent's

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said cigars were made wholly of Havana tobacco from the district of Vuelta Abajo.

The use of the name "Garcia," either alone or with other words, in connection with the manufacture and sale of cigars, and the use of the name "M. Garcia y Ca." by respondent on the boxes or containers thereof, as set forth above, was fraudulent and misleading, and was with the intent to, and it did, mislead and deceive the said cigar and tobacco trade and public into believing that respondent's said cigars were the product of a person or persons long established in the business of manufacturing and selling cigars and having the surname "Garcia," or the legal right to the use of said name in connection with the manufacture and sale of cigars, and whose cigars many of the said public believed and still believe to be of a quality superior to those made by other manufacturers.

Respondent's use of labels on the boxes or containers of his cigars having thereon an outline map of the Island of Cuba, inscriptions solely in the Spanish language, and the said guarantee that the tobacco composing his cigars was Havana tobacco, had the capacity to mislead, deceive and defraud the said trade and public, and the said trade and public were misled, deceived and defrauded thereby, into purchasing respondent's cigars as cigars either imported from Cuba or made of Havana tobacco.

The use by respondent of the said words "Havana," "Vuelta Abajo," "Garcia," "M. Garcia y Ca.," and the said map of Cuba and inscriptions in the Spanish language as above set forth, in the manufacture and sale of his cigars, caused many of the trade and public relying thereon to purchase respondent's cigars instead of or in preference to cigars of competitors of respondent whose surnames were "Garcia," or who had the lawful right to use said name in connection with the manufacture and sale of cigars, and to purchase respondent's cigars instead of or in preference to cigars of competitors of respondent who are properly labeling, branding or advertising their cigars under the said name, brands or labels "Garcia," "Havana," "Vuelta Abajo," as well as instead of or in preference to cigars of competitors who were and are manufacturing and selling cigars made of domestic tobacco and who properly did not and do not brand, label or otherwise represent their said cigars to have been made of Havana tobacco or by a manufacturer named Garcia.

CONCLUSION.

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of the Act

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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 and the agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has 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 respondent, Isador Sommerfeld, his agents, representatives and employees, do cease and desist from using in commerce, directly or indirectly, in connection with the manufacture and sale of cigars,

1. The word or name "Garcia";
2. The words "Havana," or "Vuelta Abajo," when the said cigars are not composed entirely of Havana tobacco.

3. Words or writing on labels or otherwise, solely in the Spanish language, an outline map of Cuba, or pictures or representations of Cuban scenes indicating Cuban origin of the tobacco composing respondent's cigars, when the same are not made entirely of Havana tobacco.

4. Words or writing in the Spanish language on labels or otherwise to such extent or in such manner as to indicate Cuban origin of the tobacco composing respondent's cigars, when they are not made entirely of Havana tobacco.

It is further ordered, That the respondent, Isador Sommerfeld, shall within thirty days after service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist herein set forth.

IN THE MATTER OF
NORTH DAKOTA WHOLESALE GROCERS' ASSOCIATION,
ITS OFFICERS AND MEMBERS.

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

Docket 1085—July 20, 1925.

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Where an association of wholesale grocers, and the officers, and members thereof, comprising almost all the concerns engaged exclusively as wholesale grocers in the territory involved and a majority of all concerns distributing groceries at wholesale therein, and, in the case of a substantial proportion of their number, with a community of interest through stock ownership or otherwise, in pursuance of a combination and conspiracy to fix and maintain uniform wholesale prices at which the products dealt in by them should be sold in the territory served and to confine the wholesale distribution of grocery goods therein to the "regular" and "legitimate" channels of trade, i. e., manufacturer to wholesaler to retailer to consumer, all to the end that they might monopolize the wholesale grocery trade of their said territory;

- (a) Agreed among themselves and with other wholesalers concerned and their associates upon the price at which sugar should be sold, adopted a common basing point to be used in estimating freight, and through distribution of price cards showing agreed prices, freight books showing the freight to be added to the base price from the common basing point, and in other ways established said price and kept one another and competing nonmembers informed as to the situation and prevailing view point in reference to the profits and prices to be maintained in the handling of the aforesaid commodity;
- (b) Sought to bring about the observance of tobacco manufacturers' list prices as jobbers' resale prices to retailers and cooperated with one another and with jobbers of near-by states for the purpose of agreeing upon and bringing about the observance of such prices, declined to make any concessions therefrom, either through the device of prepayment of freight or in any other way, and gave their support to communications of tobacco manufacturers to the jobbers, calculated to bring about observance of the manufacturers' aforesaid list prices;
- (c) Induced and sought to induce manufacturers, in the case of other grocery goods, to increase list prices, usually followed as resale prices, and discounts therefrom, and discouraged shipments direct from manufacturers to retailers for the account of the jobber, as tending to encourage price cutting, and sought to induce members not to cut prices;
- (d) Sought to hamper the operations of a competitor which they did not recognize as a legitimate jobber, and which (1) entered into contracts with retail dealers entitling but not requiring them to buy grocery goods from it at a certain margin above wholesale cost, (2) sold to retailers not under contract with it, in competition with the members, and made sales at substantially lower prices than its competitor jobbers, and (3) maintained