

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.

SYLLABUS.

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

a warehouse in which it sold goods purchased from widely scattered manufacturers, and had no retailer stockholders; and in seeking to accomplish their purpose above set forth,

- (1) Cooperated with the state retail merchants' association for the purpose of encouraging and persuading retailers not to go into the jobbing business;
- (2) Recommended to the membership that they procure and distribute to their customers an issue of a certain publication which contained a severe and unrestrained attack upon the individual whose name said corporation bore;
- (3) Registered protests with manufacturers who were selling to or disposed to sell to, said corporation, and called attention to the low prices at which such manufacturers' goods were being sold by said corporation, and other wholesale distributors;
- (4) Called upon the membership to furnish the names of manufacturers who were selling to said corporation, for use at a coming meeting of manufacturers and jobbers; all pursuant to a plan for a nation wide movement to have manufacturers go on record as to whether or not they would sell to concerns of the type of said corporation; and
- (5) Encouraged manufacturers who had given notice of their refusal to deal with said corporation through pledges or assurances of cooperation, and favorable comment in the association bulletins, circulated among the members;

With the result that manufacturers refused to sell to said corporation or discriminated against it;

- (e) Sought in accordance with one of the purposes of the association, to prevent manufacturers of grocery goods from selling the same direct to retailers; and in seeking to accomplish such purpose.
- (1) Declared themselves, in response to inquiries from their secretary, as in favor of refusing to handle, and, following a meeting of another jobbers' association attended by said secretary and, pursuant to the advice of their officers, thereafter refused to handle further the products of a leading manufacturer, which had changed its policy of selling exclusively through the jobber to one of selling indiscriminately to jobbers and retailers on a sliding scale of quantity prices, and concentrated their efforts upon the products of competing manufacturers who assured them of their loyalty to the jobber as the exclusive channel of distribution;
- (2) Urged upon the membership that they secure and distribute to their customers a certain issue of a publication which severely and scurrilously attacked said manufacturer and its president; and
- (3) Called to the attention of the members the case of another manufacturer, who had offended by his policy of selling direct to retailers, with the comment and suggestion, among others, that there were manufacturers of the product concerned who were "willing to give full cooperation":

Held, That such practices, substantially as described, constituted unfair methods of competition.

Mr. Walter B. Wooden for the Commission.

Newton, Dullam & Young, of Bismarck, N. Dak., for North Dakota Wholesale Grocers' Association and other respondents.

Murphy & Toner, of Grand Forks, N. Dak., for J. E. MacLean, secretary and treasurer of the North Dakota Wholesale Grocers' Association and other respondents.

Complaint.

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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 the North Dakota Wholesale Grocers' Association and the several individuals, partnership and corporations, both in their official and individual capacities, all set out in the caption hereof, 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. The North Dakota Wholesale Grocers' Association is a voluntary, unincorporated association of individuals, partnerships and corporations with their principal places of business in the State of North Dakota and engaged in selling at wholesale groceries and allied products to retail dealers located at points in the State of North Dakota and in neighboring States. Said members of said association cause said products when so sold to be transported from their aforesaid several places of business in the State of North Dakota into and through other States of the United States to said retail dealer vendees at their several points of location. In the course and conduct of their said business said members are naturally and normally in competition with each other and with other individuals, partnerships and corporations similarly engaged in the wholesaling of groceries and allied products in interstate commerce. The objects of said association are to further, foster and protect the common interests of its said members and to minimize and eliminate what said members regard as abuses, methods and practices inimical to the proper conduct of business. Respondents, J. H. Duemeland, C. O. Follett, and J. E. MacLean are respectively president, vice president and secretary-treasurer of said association, in charge of and conducting and carrying out its activities and affairs. The following named respondents are the members of said association: Grand Forks Mercantile Company, Bismarck Grocery Company, Park-Grant-Morris, Fargo Mercantile Company, Missouri Valley Grocery Company, Leach & Gamble, Grand Forks Fruit Company, Stone-Ordean-Wells Company, Nash Brothers, Minot Grocery Company, Valley City Grocery Company, Williston Grocery Company, Dickinson Grocery Company and Jamestown Grocery Company. Respondent association is hereinafter called "the association." Respondent members of said association are hereinafter called "the members."

PAR. 2. For more than three years last past respondents have agreed and undertaken to cooperate with each other to confine the

distribution of groceries and allied products to what said members regard as "regular" and "legitimate" channels of trade, to wit: From the producer or manufacturer to the wholesaler, and from the wholesaler to the retail dealer; to fix uniform wholesale prices at which the said products should be sold by the members and to prevent others from selling in the territory served by the members like products at wholesale for less prices; to prevent producers and manufacturers from supplying groceries and allied products to wholesalers who resold the same for less than said prices and to prevent producers and wholesalers from selling groceries and allied products direct to the retail trade or to consumers.

PAR. 3. Ever since entering into aforesaid undertaking, respondents, to carry out and make the same effective, have cooperated together and with others in that regard in the following acts and practices:

(a) The members acting together and through the association agreed upon and fixed uniform prices at which the products dealt in by them should uniformly be sold by the members, and thereafter sold said products at prices not less than the prices so fixed. From time to time since originally fixing said prices respondents have revised and altered the same and have continuously observed said prices and refrained from selling for less.

(b) The association requests the members to, and they do, inform the association of wholesalers, operating in the territory served by the members, who sell at prices less than those fixed by the association as above set out, whereupon, the association and the members seek by threats and intimidation, including the threat that respondents, will coerce and cause the producers and manufacturers who supply said wholesalers with goods, to cease so supplying same, in order to compel said wholesalers so reported to cease selling at prices less than those fixed by the association.

(c) The association and members seek to, and do intimidate and coerce producers and manufacturers into refusing to further supply such offending wholesalers with goods, by threatening said producers and manufacturers with a boycott of their goods unless and until said producers and manufacturers cease supplying such offending wholesalers with goods. The members further make such reports to the association upon their own initiative and assist in the above said intimidation and coercion of such offending wholesalers and of producers and manufacturers by individually bringing pressure to bear upon such producers and manufacturers.

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(d) Respondents carry out said threats by boycotting the products of such offending producers and manufacturers unless and until such producers and manufacturers accede to respondents' demands to and do, refuse and cease to further supply aforesaid offending wholesalers with goods.

(e) The association requests the members to and they do inform the association of instances of producers and manufacturers selling goods direct to retailers and/or the consuming public, whereupon the association and the members individually demand of such producers and manufacturers that they cease so selling their goods, and threaten said producers and manufacturers with a boycott by the members of such producers' and manufacturers' goods unless and until said manufacturers and producers cease to sell their goods direct to said retailers and consumers, or any other such. In the event such producers and manufacturers do not refrain from so selling, the members carry out said threats by boycotting the products of said producers and manufacturers unless and until such offending producers and manufacturers accede to aforesaid demand and cease to so sell direct. The members also make such report upon their own initiative, whereupon respondents take similar action.

(f) In connection with aforesaid boycotts, respondents urge and persuade their retail dealer customers to carry in stock and deal in the goods of other producers and manufacturers in preference to the goods of such offending producers and manufacturers.

PAR. 4. The above alleged acts and things done by respondents and by each of them have the capacity and tendency to, and do, unlawfully suppress and hinder competition in the sale and distribution of groceries and allied products in the territory served by respondents; unduly restrain and obstruct the natural flow of commerce in the channels of interstate trade 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 in 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 conclusion:

FINDINGS AS TO FACTS.

PARAGRAPH 1. Respondent, North Dakota Wholesale Grocers' Association, is a voluntary, unincorporated association of wholesale grocers doing business at and from various points within the State of North Dakota. It has been in existence for some fifteen years past, and there are some sixteen members comprising almost all the exclusively wholesale grocers in the state and a majority of all concerns distributing groceries at wholesale in any manner. The members of the association and their respective places of business are as follows:

Nash Brothers, Grand Forks, N. Dak.
 Grant Forks Mercantile Co., Grand Forks, N. Dak.
 Park-Grant-Morris, Fargo, N. Dak.
 Dickinson Grocery Co., Dickinson, N. Dak.
 Minot Grocery Co., Minot, N. Dak.
 Williston Grocery Co., Williston, N. Dak.
 Stone-Ordean-Wells Co., Grand Forks, N. Dak.
 Stone-Ordean-Wells Co., Minot, N. Dak.
 Bismarck Grocery Co., Bismarck, N. Dak.
 Valley City Grocery Co., Valley City, N. Dak.
 Jamestown Grocery Co., Jamestown, N. Dak.
 Grand Forks Grocery Co., successor to Grand Forks Fruit Co.,
 Grand Forks, N. Dak.
 Fargo Mercantile Co., Fargo, N. Dak.
 Missouri Valley Grocery Co., Mandan, N. Dak.
 Leach & Gamble, Wahpeton, N. Dak.

Six of the forgoing members are a part of the so-called Nash interests, having more or less common stockholders; three others are operated under a common management; two others are branch houses of the same concern; the remaining ones are unaffiliated.

PAR. 2. Respondent members generally are engaged in buying groceries and allied products from producers and manufacturers

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located outside the State of North Dakota, transporting same to their respective warehouses and places of business within the State of North Dakota, and selling and delivering same to retail grocers and dealers within said State, and, with some exceptions, the members also sell and deliver groceries to retail grocers and dealers located in States other than North Dakota. In the course and conduct of their said business, respondent members are naturally and normally in competition with each other and with other concerns also engaged in the interstate distribution of groceries and allied products at wholesale in North Dakota and surrounding States.

PAR. 3. Among the declared purposes of said association are, "to foster and promote a feeling of fellowship and good will among the members and to advance the welfare of the wholesale grocery trade in the territory of the members upon broad and equitable lines," and "to minimize and eliminate abuses, methods and practices inimical to the proper conduct of business." Up to the time of a preliminary investigation made by the Commission in 1922 and for a number of years prior thereto, the members and officers of respondent association, through the medium of the association, were cooperating and confederating with each other for the following aims and purposes:

(a) to fix and maintain uniform wholesale prices at which the members should sell groceries and allied products;

(b) to prevent competitors from selling at less than the prices so fixed, by inducing and procuring manufacturers not to supply wholesalers who sold at less than said prices;

(c) To prevent manufacturers of grocery goods from selling them direct to retailers;

(d) to confine the wholesale distribution of grocery goods to what respondent association and its members regarded as the "regular" and "legitimate" channels of trade, to wit: from the manufacturer to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consumer.

PAR. 4. Respondent association, its officers and members, cooperated with each other and with others to carry out its aforesaid objects and purposes with reference to the price of sugar on the occasions and in the manner and particulars hereinafter set forth:

(a) Respondents, for some ten or fifteen years, were establishing uniform wholesale selling prices on sugar by a system which they denominated "the equality plan." Under this plan the selling prices adopted jointly by wholesale grocers in Minneapolis were accepted by respondent jobbers and the freight was figured from a common basing point to destination, with the result, in the words of respondent association's secretary, that the price in "every town of North

Dakota and Minnesota with every jobber would be identically the same, whereas, if you ship by the f. o. b. plan, some towns would be a cent under." Conferences were held at Minneapolis between representatives of respondent association and of the Iowa-Nebraska-Minnesota Wholesale Grocers' Association, at which conferences sugar prices were agreed upon and arrangements made for carrying out the plan. Price cards showing the agreed prices were sent to respondent association secretary and by him relayed to his members and nonmembers also. Freight books were distributed with the price cards to show what freight should be added to the base price. from the common basing point to each station in North Dakota and Minnesota. Telegraphic advices as to changes in price were received from the secretary of the Iowa-Nebraska-Minnesota Wholesale Grocers' Association by respondent association's secretary and were relayed by him to respondent members. The "equality plan" was abandoned during the war under Food Administration regulations but was later restored.

(b) In the spring of 1920, when the price of sugar was making frequent and sensational advances, respondent association's secretary attended a meeting of "the northwestern jobbers" in Minneapolis, after which he wrote a member that "whereas nothing was put in print it was the understanding among the jobbers that the replacement value on sugar should be considered in making your sales, regardless of what sugar was purchased at," that "they felt the jobber was entitled to 10 per cent profit on top of this," and asked that his letter be destroyed.

(c) In the summer of 1921 respondent association secretary attended a meeting at Minneapolis called by the secretary of the Iowa-Nebraska-Minnesota Wholesale Grocers' Association, at which were present wholesale grocers from Iowa, Minnesota, and North and South Dakota. At this meeting arrangements were made to put into effect a plan which would equalize the price of sugar in the States of Iowa, South and North Dakota, and particularly in the border towns of those States. Members of respondent association, under the advice of respondent association's secretary, adopted the plan and changed their selling prices to accord therewith, the secretary circularizing them to the effect that "there is a lot of pleasure when all jobbers' salesmen will be selling at the same price at the same time all over our state."

(d) Early in 1922 a member of respondent association wrote respondent association's secretary that a meeting had been held the week before, attended by several nonmembers, and that "it was decided that if all of these houses that handle sugar regardless of the fact that they belong to our association or not, received the lists

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from your office on the same date, would insure any changes in price on sugar being put into effect by the Fargo dealers on the same date."

PAR. 5. Respondent association, its officers and members, cooperated with each other and with others to carry out its objects and purposes with reference to the price of tobacco on the occasions and in the manner and particulars herein set forth:

(a) Respondents took advantage of the fact that the tobacco manufacturers' list price, from which the jobber received a certain discount, had become recognized by the jobbing trade as the correct resale price to the retailer, and directed their efforts toward the observance and maintenance of the manufacturers' list as a uniform, agreed selling price.

(b) In September, 1918, respondent association's secretary informed his members that he had requested the secretary of the Minnesota association to induce the Minnesota jobbers to discontinue prepaying freight on tobacco shipped into North Dakota, and that as a result the Minnesota jobbers had unanimously agreed to discontinue the practice on a certain date. The prepayment of freight was a device used to cut list prices indirectly and amounted to a reduction in the selling price.

(c) In 1920, and particularly in 1921, respondents cooperated with each other, with the secretary of the Iowa-Nebraska-Minnesota Wholesale Grocers' Association, and with the Minnesota members thereof, to eliminate the selling of tobacco at less than the manufacturers' list price. In March, 1921, respondent association's secretary wrote the president reminding him that "we agreed not to make any concession whatsoever, in drop shipments on tobacco or anything else at our annual meeting last year in Fargo. We have absolutely lived up to that agreement." At the annual meeting of respondent association in May, 1921, the secretary was authorized to give assurances to the Minnesota jobbers that the North Dakota jobbers would eliminate price cutting on tobacco provided the Minnesota jobbers would do likewise. After much negotiation a certain Duluth jobber who was held chiefly responsible for much of the price cutting on tobacco was induced to announce its adherence to list prices and North Dakota jobbers were urged by respondent association's secretary to a similar adherence. Respondent association's secretary characterized this as the final settlement of the matter.

(d) Prior to this final settlement the American Tobacco Company and other large tobacco manufacturers, located outside the State of North Dakota, issued letters to the jobbing trade of North Dakota and elsewhere in which they intimated that jobbers who did not sell their brands of tobacco at a sufficient profit would be denied the privilege of buying those brands. Respondent association's secretary wrote said manufacturers stating that their announcements were in line with

suggestions he had made to their representatives and that he would report to them any price cutting which might occur in his territory. He circularized his membership, informing them that the manufacturers meant what they said, that "most of those who handle tobacco will probably sit up and take notice," and that he would report to the manufacturers "any violation that comes to my notice when I have full proof that the tobacco is being sold at a discount." He stated to his members that they had spent much "time and money getting this matter adjusted and we finally got to a point where the big axe had to be used by someone in authority." He advised various respondent members "to stay strictly on list," that price cutters were "cutting their own throats," were "playing with fire," and were "apt not to get any tobacco." The tobacco manufacturers were credited by respondent jobbers with giving strong and effective support to the maintenance of list prices. The president of respondent association reported to the tobacco manufacturers the names of his competitors who were cutting list prices and enlisted the manufacturers' aid in preventing it.

PAR. 6. Respondent association, its officers and members, cooperated with each other and with others to carry out its objects and purposes with respect to the prices of other grocery goods on the occasions and in the manner and particulars hereinafter set forth:

(a) For a number of years prior to 1922 respondents through their combined influence induced and sought to induce manufacturers to increase the list price and the discount from list price which they allowed to wholesale grocers knowing that the list price was usually followed as the resale price and informing their members that among wholesale grocers generally "ninety or ninety-five per cent of the jobbers did get the margins allowed and that on the actual volume of dollars the deviation from list allowed by manufacturers was almost nothing unless a large single purchase of a given article was the basis of the price concession."

(b) Manufacturers of soap, tobacco, and branded cereals, located outside of the State of North Dakota, were among those induced by respondent association and sister associations, thus to increase the list price and the discount allowed jobbers therefrom.

(c) Respondent members were informed by their secretary that wholesale grocers' associations throughout the country were opposed to shipments direct from the manufacturer to the retailer for the jobbers' account, because the practice tended toward price cutting. This tendency arose from the temptation to share the saving in handling costs with the buyers.

(d) Members were advised not to suspect their competitors of "selling at a sacrifice," not to "forget that equality in price is in-

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evitable," and that "you may lower the basis of operation but you can't change the fact."

PAR. 7. Respondent association, its officers and members, cooperated with each other and with others to prevent competitors from selling at less than the prices approved by the association, on the occasions, in the manner, and with the results hereinafter set out:

(a) Respondent members were and are in competition with the Creasey Corporation of Grand Forks, N. Dak., for the trade of retail grocers located in Minnesota, North Dakota, and Montana. Some 300 of the retail customers of the Creasey Corporation hold contracts with it entitling but not requiring them to buy grocery goods from the corporation at a certain margin above wholesale cost. Retailers own no stock in the corporation and frequently buy from respondent jobbers. The corporation also sells to retailers who have no contract, in competition with respondent jobbers. It maintains a warehouse at Grand Forks in which it stores goods purchased from manufacturers scattered widely over the country in various States and ships direct to its customers from the manufacturer's place of business as well as from its warehouse.

(b) The officers and members of respondent association did not recognize the Creasey Corporation as a "legitimate" jobber and admittedly one of the chief reasons for their attitude was that the prices charged by the corporation to retailers were substantially less than those charged generally by its competitors.

(c) In the spring of 1920 the competition of the Creasey Corporation began to be seriously felt by respondent members and the sources through which it secured supplies were the subject of discussion among respondents. In June, 1920, respondent association's secretary cautioned the members that "we are careless how we write different manufacturers regarding who they sell," suggested that complaints of that sort be handled through his office, that he was very careful in handling such matters, that "you can not leave a trace whereby your letters come before the Federal Trade Commission as you know what might happen," and that "you can say a lot sometimes but do not put anything into writing."

(d) Steps were taken to cooperate with the officers of the North Dakota Retail Merchants Association for the purpose of discouraging and persuading retailers not to go into the jobbing business.

(e) In July, 1920, respondent association's secretary recommended to the members that they procure and distribute to their customers a certain issue of a publication known as Duncan's Trade Register, "which devotes its pages to expose the Creasey Corporation all over the United States as far as they have been able to do." The issue recommended for the purpose contained no reference to the Creasey Corporation of Grand Forks. It did refer

to Creasey as a faker operating a shell game in the name of co-operation, with "the most shameless crew of liars, crooks and loose women ever assembled for the purpose of fleecing retail grocers."

(f) Respondent members, both orally and in writing, registered objections with manufacturers, outside of North Dakota, who were selling or disposed to sell the Creasey Corporation and called attention to the low prices at which the manufacturers' goods were being sold by the corporation and other wholesale distributors. Among the manufacturers with whom objections were registered were Peet Bros. Manufacturing Co., James S. Kirk & Co., Quaker Oats Co., Baker Importing Co., Corn Products Refining Co., and Pillsbury Flour Mills Co.

(g) Pursuant to a plan for a nation wide movement to have manufacturers go on record as to whether or not they would sell concerns of the Creasey type, respondent association's secretary requested his members to furnish the names of manufacturers who were selling the Creasey Corporation of Grand Forks, for use at a Chicago meeting of manufacturers and one thousand jobbers. In response a list of ten manufacturers, located outside of North Dakota, who were supplying Creasey, was furnished to the secretary.

(h) The matter of manufacturers selling the Creasey Corporation was discussed at the annual meetings of respondent association. The secretary advised one manufacturer who had advised him it had refused to sell Creasey that "it should be known among the jobbers and manufacturers who are remaining loyal to the legitimate jobbers throughout the country," that "it is the jobbers' duty to support more than ever those manufacturers who are living up to a policy like yours," and that in his "next bulletin to our members I shall surely mention the fact that you are one of the loyal ones." Later the secretary circularized respondent members stating that he had "assured them our members would give better cooperation." Other manufacturers who refused to sell Creasey received favorable comment in the secretary's bulletins.

(i) A leading manufacturer of flour and cereal specialties located outside of North Dakota, sold to the Creasey Corporation at jobbers' prices until September, 1922. Basing its action upon reports of its salesmen that the jobbers of Grand Forks would not buy its goods or the goods of other manufacturers who sold Creasey, the manufacturer authorized its salesmen to assure the jobbers of "our good intent, that of giving them whole-hearted support with the Creasey Corporation as a thing of the past," and advised its salesmen that "if it is necessary to promise the Grand Forks jobbers that we will discontinue selling the Creasey Corporation (before) they will con-

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sent to place an order for specialties to be delivered the coming fall, then we believe it advisable to comply with their wishes." Shortly thereafter this manufacturer withdrew the jobber's discount from the Creasey Corporation and charged it a materially higher price than its respondent competitors.

(j) A number of manufacturers, located outside the State of North Dakota, were still refusing to sell or discriminating against the Creasey Corporation at the time of hearings in 1924, giving the reason that other jobbers with a larger distribution objected. Several of these manufacturers are those who were acting under the influence and in cooperation with respondent members. For example, in writing to respondent association president in August, 1921, respondent association's secretary referred to the alleged unsatisfactory profit on a certain manufacturer's goods and said:

There is one thing to bear in mind with the Quaker people. They are a large concern and have a nationally advertised line and do a lot of specialty work for the jobber, and especially now when we have gotten them to stay from the Creasey Corporation we feel not only us in Grand Forks but jobbers throughout the State of N. D. should give them all the support possible. We are putting all our efforts on their line.

PAR. 8. Respondent association, its officers and members, have cooperated with each other and with others to prevent manufacturers of grocery goods, located outside the State of North Dakota, from selling them direct to retailers, on the occasions, by the methods, and in the particulars hereinafter set forth:

(a) One of the formally declared purposes of respondent association is "to establish harmonious relations between the manufacturer, wholesaler and retailer to the end that the wholesaler shall become generally recognized as an essential factor for the distribution of products of the manufacturer." The matter of manufacturers selling direct to retailers has engaged the attention of the association throughout its fifteen years of existence. Whenever such sales occurred the members were supposed to report them to the secretary who would take it up with the manufacturer, and report back to its members the results of such negotiations.

(b) In 1920, one of the leading soap manufacturers of the country, located outside the State of North Dakota, changed its policy of selling exclusively through the jobber to one of selling indiscriminately to jobbers and retailers on a sliding scale of quantity prices. Upon receipt of notice of this change of policy respondent association's secretary circularized his members stating his intention of attending a meeting of jobbers at Minneapolis to discuss the matter, pointing out that other manufacturers might be influenced to sell direct, and asking his members to state their views. Various members replied to the

effect that if the jobbers held together and pushed competitive soaps they could render the new policy unsuccessful and that they should unite in refusing to handle small lot orders for retailers who still desired to purchase this soap through the jobber. Acting under request of respondent association president, respondent association's secretary circularized the members and suggested that they all refuse to accept small orders for this manufacturer's product. The association president refused to accept such orders when proffered him by a salesman of the manufacturer. All this occurred prior to the Minneapolis meeting referred to.

(c) On July 8, 1920, respondent association's secretary attended a special meeting of jobbers at Minneapolis called by the Iowa-Nebraska-Minnesota Wholesale Grocers' Association to discuss ways and means of meeting the situation created by the change in policy of this same widely known soap manufacturer. Four days later respondent association's secretary sent out a bulletin to respondent members describing the Minneapolis meeting and stating that he wanted them to do what "every jobber at the Minneapolis meeting pledged themselves to do," namely, not to accept small lot orders for this manufacturer's product and to push the sale of competitive soaps made by loyal manufacturers. Respondent members were urged to recognize that "this means union efforts from all jobbers," as other manufacturers might adopt a similar policy, and "not forget that the whole country is in this battle." The bulletin containing these statements carried the following caption:

Important—Read every word thoroughly, and then destroy this letter.

(d) Respondent members thereupon and thereafter completely discontinued the purchase of said manufacturer's product and concentrated their sales effort upon the products of competitive manufacturers who then assured the trade of their loyalty to the jobber as their exclusive channel of distribution to the retailer. A prominent member of respondent association assured one of the loyal manufacturers that when the other manufacturers "get every wholesale grocer jobber in this territory riding their necks they will know that there is something doing."

(e) Respondent association's secretary suggested that the members secure and distribute to their customers a certain issue of the publication Duncan's Trade Register. The issue in question contained such scurrilous matter regarding this manufacturer who had changed its policy and regarding his product and characterized its president as a hypocrite, liar, and crook.

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(f) Other manufacturers, located outside the State of North Dakota, who sold or attempted to sell direct to retailers were reported to respondent association's officers and the officers reported them generally to members of the association, with comment such as the following:

QUALITY MACARONI.—The writer had considerable correspondence with the Quality Macaroni people regarding selling direct to retailers in N. D. A year ago I had it up with them and they said they would not sell in N. D. Since then they have gone into N. D. and it looks impossible to do anything with them. When a manufacturer of an article like macaroni does not want to cooperate with the jobbers there is no need of me telling you what to do, only there are people manufacturing macaroni who are willing to give full cooperation.

PAR. 9. Respondent association, its officers and members, by the methods and in the particulars hereinabove set forth, were engaged in a combination and conspiracy to confine the wholesale distribution of grocery goods in their territory to what respondents regarded as the "regular" and "legitimate" channels of trade, to prevent, by means of "black-listing" and "boycotting," manufacturers, located outside the state of North Dakota, from selling through other channels, and to obstruct competing wholesale distributors not in accord with respondents' purposes in the free purchase of supplies from said manufacturers; all to the end that respondents might monopolize the wholesale grocery trade of their territory, and with other wholesale grocers not respondents but with like purposes, establish uniform selling prices by agreements and understandings between concerns normally and naturally in competition with each other.

CONCLUSION.

That the practices of respondent association, its officers and members, as set forth in the foregoing findings of fact, constituted, in the circumstances therein set forth, a combination and conspiracy to engage in and 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 answers of respondents, the testimony and evidence offered before the trial examiner, the trial examiner's report upon the facts and counsel's exceptions thereto, upon briefs submitted by counsel, oral argu-

ment being waived, 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, North Dakota Wholesale Grocers' Association, its officers, individually and as representatives of the members, the successors of said officers, and the members of said association, their agents, representatives, and employees, cease and desist from conspiring, confederating or co-operating among themselves or with others, directly or indirectly, in the following practices:

1. By adopting and maintaining or endeavoring to adopt and maintain uniform selling prices on grocery products sold by respondent members.

2. By arranging or attending meetings of competing jobbers or circulating information among competing jobbers for the purpose of causing them to adopt or adhere to uniform selling prices in their competition with each other.

3. By agreeing among themselves or with other competing jobbers to maintain manufacturers' list prices as the jobbers' resale prices and to make no indirect concessions therefrom, such as prepayment of freight or giving the buyer the benefit of the saving in handling costs on shipments made direct from the manufacturers.

4. By inducing and procuring competing jobbers to adopt and adhere to the manufacturers' list prices as the jobbers' selling prices on various commodities, inducing manufacturers to increase their list prices and discounts to the jobber for the purpose of increasing the jobbers' gross margins and selling prices and making them uniform, and reporting or threatening to report to manufacturers such jobbers as failed or refused to adopt the manufacturers' list prices and adhere to them as their selling prices in competition with respondent members.

5. By preventing or attempting to prevent competitors who undersell respondent members from securing goods from manufacturers on equal terms with respondent members, through concerted objections lodged with manufacturers, and through concerted refusals or threatened refusals to buy from manufacturers if they sell such competitors of respondent members.

6. By recommending or procuring the circulation of scurrilous and defamatory attacks on competitors who undersell respondent members, among the customers or prospective customers of such competitors.

Order.

9 F. T. C.

7. By circulating among respondent members favorable comment concerning such manufacturers as refuse to sell certain competitors of respondent members and urging respondent members to give increased support and cooperation to such manufacturers.

8. By reporting to officers of respondent association the names of manufacturers who have sold direct to retailers for the purpose of enabling the officers to use the power and influence of respondent association to induce such manufacturers to remain completely loyal to respondent jobbers as their exclusive channel of distribution in respondents' territory, and by reporting to respondent members the failure of such efforts with suggestions that the members refuse to handle the goods of such manufacturers.

9. By concerted withdrawal or by seeking pledges of concerted withdrawal of patronage from manufacturers who sell or attempt to sell jobbers and retailers indiscriminately and concertedly concentrating their sales efforts on the goods of so-called loyal manufacturers.

10. By recommending or procuring the circulation of scurrilous trade papers and/or defamatory attacks on manufacturers selling indiscriminately to jobbers and retailers, among the retail customers or prospective retail customers of such manufacturers.

11. By cooperating with nonmember wholesale grocers or with associations of wholesale grocers in other parts of the United States to further any of the practices prohibited in the foregoing portions of this order.

It is further ordered, That the respondents shall file with the Federal Trade Commission, within sixty days from date of this order, their report in writing, stating the manner and form in which this order has been conformed to.

Syllabus.

IN THE MATTER OF

B. W. COOKE, C. E. WESCH, AND JOB-WAY HOME
STUDY, INC.

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

Docket 1512—September 21, 1925.

SYLLABUS.

Where an individual engaged in the business of teaching mechanical and other forms of drafting by mail, and also the trade of repairing automotive vehicles, a corporation organized and controlled by him, and a person associated with him; in advertising, promoting, and conducting the aforesaid business, and in describing their courses to pupils and to prospective pupils, and the results which might be expected therefrom by them;

- (a) Falsely represented that in a period of about ten months they could qualify any pupil, with common or ordinary school education, as an expert draftsman, and that there was a tremendous demand for expert draftsmen, and especially for those trained by them, and represented that they would obtain for pupils, upon the completion of their courses, responsible positions paying salaries ranging from \$200 to \$800 per month and from \$50 to \$150 a week, the fact being that pupils did not as a rule secure responsible positions, but obtained employment, if at all, at salaries ranging from \$75 to \$150 and never in excess of \$200 a month, and that they never placed pupils in positions in which said pupils received salaries amounting to \$250 a month or more;
- (b) Represented that should they fail to qualify the pupil as a drafting expert, or should he for any reason be dissatisfied, they would refund to him all money paid, the fact being that they did not legally guarantee any such refunds;
- (c) Used the name Associated Drafting Engineers in conducting their aforesaid business, falsely representing that there existed a great association of practical engineers engaged in offering and conducting the course of instruction above referred to, through the aforesaid individual, designated as "Chief of Staff" of such fictitious association, and that such association would give to the pupil the benefit of the ability and influence of its members in first qualifying him as an expert and in later securing for him a valuable position at a high salary as already set forth;
- (d) Used the trade name "Chicago Auto Shops" in conducting that part of their business having to do with the repair of automotive vehicles, and represented that their course of instruction relating thereto was offered by the aforesaid fictitious business enterprise as a branch, division or department thereof, representing that said pretended Chicago Auto Shops was an important business enterprise engaged in the repair and maintenance of automotive vehicles, and which operated in connection with its aforesaid business a research and experimental laboratory, and displaying, in connection with such representation, pictures of a large and thoroughly equipped repair shop, with numerous mechanics at work upon