

Syllabus.

IN THE MATTER OF

CALIFORNIA RETAIL FUEL DEALERS' ASSOCIATION,
ITS OFFICERS AND EXECUTIVE COMMITTEE 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 1098—November 11, 1925.

SYLLABUS.

Where a state association of retail fuel dealers, which recognized as a "legitimate" retail coal dealer, a dealer engaged in buying coal for the purpose of resale to the public in retail quantities, and maintaining an office and yard, and displaying a sign, with a stock of coal and scales and equipment for properly weighing the same, and which included in its membership a majority of the so-called legitimate retail coal dealers in the state; and members of such association; in pursuance of a conspiracy to prevent cooperative associations from obtaining adequate supplies of coal for their business from the producers, or their representatives, at the prices charged the members or other competitors,

- (a) Ascertained the sources of supply of the aforesaid cooperative associations and remonstrated with the coal operators who supplied them and protested against the sale and transportation of coal to said associations; and
- (b) Published the names of operators furnishing a cooperative association with coal, in their official organ which circulated among the members and retail coal dealers generally in the state, and which included in its purposes the bringing of information to association members and other retail fuel dealers as to the activities of "illegitimate" coal dealers;

With the capacity and tendency to influence the members and other dealers to refrain from purchasing coal from the operators so named, and to influence producers and their representatives to refuse to ship or sell coal to the cooperative associations, and with the result that in some cases shipments already in course of transportation to a cooperative association were diverted to other dealers, recognized by said association as legitimate, to the serious inconvenience and prejudice of such cooperative association:

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

Mr. James M. Brinson for the Commission.

Mr. John W. Preston of San Francisco, Calif., for California Retail Fuel Dealers' Association, its officers, executive committee and members and other respondents.

Senior & Senior of Salt Lake City, Utah, for Liberty Coal Co. and J. S. Critchlow, individually and as agent of Liberty Coal Co.

Complaint.

9 F. T. C.

Mr. Mahlon E. Wilson of Salt Lake City, Utah, for Lion Coal Co., Gunn Quealy Coal Co. and Fred Bosner, individually and as manager of Lion Coal Co.

Mr. Ira S. Lillick of San Francisco, Calif., for King Coal Co. and Frank J. Foran, individually and as vice president of the King Coal Co.

Mr. Leon A. Clark of Oakland, Calif., for Standard Coal Co. of California and Frank C. Coxhead, individually and as secretary of Standard Coal Co. of California.

Fitzgerald, Abbott & Beardsley of Oakland, Calif., for Bear Fuel Co.

Bagley, Judd & Ray of Salt Lake City, Utah, for Royal Coal Sales Co. and E. W. Matson, individually and as agent of Royal Coal Sales Co.

DeVine, Howell, Stine & Gwilliam of Ogden, Utah, for Superior Rock Springs Coal Co. and Hugh Crea, individually and as agent of Superior Rock Springs Coal Co.

Mr. Sterling Carr of San Francisco, Calif., for Charles R. Allen, individually and as agent of Central Coal & Coke Co.

Mr. Ferdinand Erickson and Mr. H. J. Birch of Salt Lake City, Utah, for Utah Fuel Co. and William H. Myers, individually and as agent of Utah Fuel Co.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the parties named in the caption hereof, 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. Respondent, California Retail Fuel Dealers' Association, is an unincorporated association of wholesale and retail dealers in coal located at points throughout the State of California. Said association is hereinafter called the State association. It is composed of the several respondent associations set out in section 2 of the caption hereof,¹ said last named associations being local associations of retail dealers in coal, and the members of said local associations being represented in the State association by representatives and delegates chosen from their number by said members. The membership of the State associations likewise includes a number of retail dealers doing business in the State of California who are not affli-

¹ See footnote on p. 411 et seq.

ated with any local association for the reason that such members are located at points where there are not a sufficient number of retail dealers in coal to form a local association. Further, the membership of the State association includes a number of wholesale dealers in coal from whom the retail dealers in California including the members of the State and local associations, purchase the coal in which they deal. Among said wholesaler members of said State association are the respondents set out in section 3 of the caption hereof.

Respondent, J. C. Ferger, is president; respondent R. E. Wilcox, first vice president; respondent H. R. Slayden, second vice president; respondent E. F. Hughes, third vice president; respondent P. C. Frederickson, treasurer, and respondent J. R. Muir, secretary, of the State association. As such officers said last named respondents act for and on behalf of said association, in charge of and conducting its activities and affairs. Respondents J. Cal Ewing, Geo. A. Burns, F. S. Myers, J. C. Ferger, P. C. Frederickson, J. B. Muir, and George Otzen, are each members of the executive committee of said association and collectively constitute said committee. Said committee supervises all the business and affairs of the State association and aids and assists the above named officers of said association in and about the carrying out and prosecution of its business and affairs.

Each respondent association set out in section 2 of the caption hereof is a local association of retail dealers in coal doing business in the State of California and in the city, county, or locality appearing in its name. The several individuals named as respondents in said section are the officers of said associations respectively, as set out in said section, in charge of and conducting the activities and affairs of said associations. Said associations are hereinafter called the local associations. Said retail dealers are all qualified as such under a definition adopted and recognized by both the State and the local associations, which in substance is that any person who engages in the sale of coal or wood as a regular business, buying to sell again; who shall own and operate a yard; keeping an office and displaying a sign; having a stock of coal and proper scales to weigh the same, shall be regarded as a retail dealer. Retail dealers thus qualified are considered and denominated by respondents, regular or legitimate dealers. Under the several constitutions and by-laws of the State and local associations only retail dealers as above defined are eligible to membership and are in fact members of said associations or any of them, and all dealers or other persons who sell coal at retail to the consuming public and who do not fulfill the requirements and qualifications of said definition are by respondents denominated and considered irregular or illegitimate dealers, and are

Complaint.

9 F. T. C.

refused membership in, and are excluded from each and all said associations.

In the absence of the matters and things hereinafter alleged, the members of each local association would naturally and normally be in free and unrestricted competition with each other in the sale of coal at retail to the consuming public in the territory served by them, and to some extent with the members of the other local associations. The objects, purposes, and activities of each local association are to promote and protect the common interests of its members and to restrict retail dealing in coal to retailers defined as above set out, the majority of whom in the State of California belong to the State and local associations.

The respondents named in section 3 of this caption hereof¹ are individuals, partnerships, and corporations engaged in wholesaling coal in the State of California, from whom the retail members of respondent associations and other retailers in the State of California purchase the coal in which they deal. The several individuals named in this section of the caption are agents and officials of said business concerns as severally set out and indicated in said section, and are engaged in and about the prosecution of the business and affairs of said concerns. Said business concerns are for the most part subsidiaries or sales departments of producers of coal, owning and/or operating coal mines in the States of Utah, Wyoming, New Mexico, and Oregon, and supplying most of the coal used for domestic consumption in the State of California. Said wholesalers do not, except to an unsubstantial extent, carry stocks of coal in the State of California from which to sell and make deliveries of coal to their aforesaid retail dealer customers, but conduct their said business as follows: Said wholesalers upon receiving orders for coal from said retail dealers transmit said orders to aforesaid producers of coal located in the States of Utah, Wyoming, New Mexico, and Oregon, and said producers upon receiving said orders ship the coal thus sold from their aforesaid several mines and points of production into California and directly to said retail purchasers. Payment for the coal thus purchased is for the most part made by the retail dealer purchasers direct to the producers at their places of business or points of production outside of the State of California. In practically all instances the sales made by aforesaid wholesaler respondents are not sales made for themselves and on their own account, but are sales made for and on behalf of said producers outside of the State of California. In the absence of the matters and things hereinafter alleged, said wholesalers would naturally and normally be in free and unrestricted competition with each other in the sale

¹ See footnote on p. 412.

of coal to retail dealers, cooperative purchasing associations and groups and others desiring to purchase coal in wholesale quantities.

The respondents named in section 4 of the caption hereof are individuals engaged, amongst other things, in the business of selling coal at retail to the consuming public in the State of California, and having their respective places of business at points in that State.

The members of the respondent associations number in the aggregate more than five hundred, which number varies from time to time by the dropping out of existing and the addition of new members, so that it is impracticable to make parties respondent to this proceeding each and all the members existing at any given time, and who together constitute a class too numerous to be made parties respondent to this proceeding and to be brought before the Commission herein without manifest inconvenience and delay, wherefore, the officers of said respondent associations made respondents herein individually and as such officers, are further now here made respondents as representative of all the members of said respondent associations.

PAR. 2. In about the year 1920 respondents agreed and undertook to cooperate with each other in suppressing competition in the sale of coal at retail in the State of California; in fixing uniform prices at which coal should be sold at retail in said State; in preventing the distribution of coal to consumers in the State of California by any other means, or through any other channel than that beginning with the producer and flowing through the wholesaler to the retail dealer qualified as such under the definition adopted by respondents as hereinbefore set out, and through such retailer to the ultimate consumer, said channel being considered and denominated by respondents the regular or legitimate channel; and to prevent cooperative purchasing associations and so-called irregular or illegitimate retail dealers from obtaining coal at wholesale. Ever since entering into said undertaking respondents, to carry out said mutual purposes, have cooperated together and with each other in that regard in the following acts and practices:

(a) The members of each local association agreed upon and fixed prices at which coal should uniformly be sold at retail by them, and thereafter abided by and observed and now abide by and observe said prices, the same being from time to time revised by the members to meet varying conditions of trade.

(b) The local associations advise each other and the State association of said prices and members of one local association in selling coal in the territory served by another local association are required to and do observe the association prices in force in the territory where such sales are made.

Complaint.

P. 11 C.

(c) Respondent members report to the local and State associations all cases of nonobservance of aforesaid prices by retail dealer members, and members so offending are punished by fines and other punitive measures provided for in the several constitutions and by laws of the local associations, including expulsion from the association.

(d) Respondent wholesalers refuse to, and do not supply so-called irregular dealers and cooperative purchasing associations with coal and are kept advised in that regard by the other respondents who directly and through respondent associations inform respondent wholesalers of the names and locations of said irregular dealers.

(e) Respondent members keep cooperative purchasing associations, so-called irregular dealers and other dealers who refuse to and do not abide by aforesaid fixed prices, under surveillance in order to ascertain whether such purchasers or dealers are obtaining coal from wholesalers, and when shipments of coal are received by said purchasers and dealers, said respondents ascertain and secure the car numbers and initials of the cars in which said shipments are contained and the shipping directions, billing and other marks appearing on said cars and through these and all other available means seek to identify the vendors of said coal. When such vendors are identified respondents request and endeavor to persuade said vendors to refuse to further supply said purchasers and dealers with coal. In instances where said vendors do not accede to such requests and persuasion, respondents by boycott, threats of boycott and other methods of intimidation, coerce and compel said vendors to refuse and refrain from further supplying said purchasers and dealers with coal.

(f) Respondents use other equivalent cooperative means to carry out their agreement and undertaking, hereinbefore set out.

Par. 3. The above alleged acts and things done by respondents, and by each of them, have tended, and still tend to, and did and do constrain producers and wholesalers of coal to confine the distribution of coal in the State of California to aforesaid regular channels selected and approved by respondents, and to prevent so-called irregular dealers and cooperative associations of purchasers in California from securing coal at wholesale or from any other source than from so-called regular retail dealers in the State of California and at the retail prices fixed by respondents, as hereinbefore set out, with the result that competition in the distribution and sale of coal in said State has been and is unduly and hindered, and consumers in said State have been

and are deprived of the advantages in price and otherwise which they would obtain from the natural flow of commerce in coal under conditions of free competition. Wherefore, said acts and things done by respondents 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 each and all of the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents having filed their answers, and the respondent California Retail Fuel Dealers' Association and the other respondents mentioned in sections 1, 2, and 4 of the caption hereof¹ having appeared by their attorney, John W. Preston, jr., respondents Standard Coal Co. of California and F. G. Coxhead by Leon A. Clark, and Utah Fuel Co. and William H. Myers by McCutchen, Olney, Manor & Green and Allan P. Matthew, hearings were had and evidence introduced in support of the allegations of the complaint herein; and in addition thereto, the respondents named in sections 1, 2, and 4 of the caption hereof made and entered into a stipulation in the record with the attorney for the Federal Trade Commission, and subject to its approval, as to certain facts in this proceeding; and it having been agreed in said stipulation that the facts it contained might be considered by the Commission in connection with the other testimony taken in the course of said hearings, and briefs having been filed for and on behalf of the Commission, and for said respondents named in sections 1, 2, and 4 of the caption, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

¹Caption follows:

SECTION 1: California Retail Fuel Dealers' Association, its officers and executive committee and members: J. C. Feger, individually and as president of said association; R. E. Wilcox, individually and as first vice president of said association; H. R. Slayden, individually and as second vice president of said association; E. F. Hughes, individually and as third vice president of said association; P. C. Frederickson, individually and as treasurer of said association; J. B. Muir, individually and as secretary of said association; J. Cal Ewing, Geo. A. Burns, F. S. Myers, J. C. Feger, P. C. Frederickson, J. B. Muir, Geo. Otzen, all individually and as members of the executive committee of said association, and collectively constituting said executive committee.

SEC. 2: Retail Coal & Wood Dealers' Association of Alameda County, its officers and members; E. T. Gorie, individually and as president of said association; I. R. Whitney,

Findings.

9 F. T. C.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, the California Retail Fuel Dealers' Association, is unincorporated and its members consist of the following classes:

In the cities, towns, or localities in California where there are numerous retail coal dealers there is a local association which is a member of the said State association, and such local association is represented in the State association by delegates chosen by it from its own membership. This class of members in the said State association will be hereinafter designated as local association members.

In those cities, towns, or localities in California where the number of retail coal dealers is insufficient to organize or maintain a local association, any retail coal dealer of such city, town, or locality may become a member of the respondent, California Retail Fuel Dealers' Association, herein described as the State association, provided such dealer, under the constitution and by-laws of said association, is eligible to such membership. Such are called direct members.

individually and as vice president of said association; O. E. Asman, individually and as treasurer of said association; J. B. Muir, individually and as secretary of said association. Stockton Retail Coal Dealers' Association, its officers and members: H. B. Rigens, individually and as president of said association; C. W. Minnahan, individually and as vice president of said association; B. E. Wilcox, individually and as secretary of said association; I. F. Stien, individually and as treasurer of said association. Richmond Retail Fuel Dealers' Association, its officers and members: E. H. Higgins, individually and as president of said association; Robert Dornan, individually and as secretary of said association. Sacramento Retail Fuel Dealers' Protective Association, its officers and members: Fred Horrell, individually and as president of said association; George Bonefoy, individually and as vice president of said association; W. S. Davies, individually and as treasurer of said association; F. A. Feretta, individually and as secretary of said association. San Jose Feed & Fuel Dealers' Protective Association, its officers and members: Charles T. O'Connell, individually and as president of said association; J. J. Bennetts, individually and as secretary of said association. San Francisco Retail Coal Dealers' Association, its officers and members: A. Bullerdick, individually and as president of said association; J. F. Mullen, individually and as secretary of said association. Peninsula Fuel Dealers' Association, its officers and members: J. B. Perry, individually and as president of said association; R. H. Hughes, individually and as vice president of said association; W. O. Horabin, individually and as secretary of said association. Southern California Fuel & Feed Dealers' Association, its officers and members: H. R. Slayden, individually and as president of said association; W. E. Shelden, individually and as secretary of said association.

SEC. 8: Blue Diamond Coal Co.; Standard Coal Co.; Liberty Coal Co.; J. S. Critchlow, individually and as agent of the Liberty Coal Co.; Lion Coal Co.; Gunn Guenly Coal Co.; King Coal Co.; Frank J. Foran, individually and as vice president of the King Coal Co.; Lion Rock Springs Coal Co.; Fred Bosner, individually and as manager of said Lion Rock Springs Coal Co.; Standard Coal Co., of California; Frank C. Coxhead, individually and as secretary of said Standard Coal Co., of California; Bear Fuel Co.; Royal Coal Sales Co.; E. W. Matson, individually and as agent of said Royal Coal Sales Co.; Superior Rock Springs Coal Co.; Hugh Crea, individually and as agent of said Superior Rock Springs Coal Co.; Central Coal & Coke Co.; Charles R. Allen, individually and as agent of said Central Coal & Coke Co.; Utah Fuel Co.; William H. Myers, individually and as agent of said Utah Fuel Co.

SEC. 4: C. G. Epperson and O. F. Fisher, copartners doing business under the trade name and style, Yolo Feed & Fuel Co.; V. J. B. Cheda; A. C. Schlosser; F. P. Gray; L. B. Rosenberg.

Officers of the said respondent State association who conduct its business and manage its affairs are: Respondents J. C. Ferger, president; R. E. Wilcox, first vice president; H. R. Slayden, second vice president; E. F. Hughes, third vice president; P. C. Frederickson, treasurer, and J. B. Muir, secretary. The executive committee which, under the constitution and by-laws, consults with its officers and assists them in conducting the business of the association, consist of the respondents J. Cal. Ewing, George A. Burns, F. S. Myers, J. C. Ferger, P. C. Frederickson, J. B. Muir and George Otzen.

PAR. 2. The local associations which are members of the said State association, together with the officers who direct the business of the local associations, are the following respondents:

Retail Coal & Wood Dealers' Association of Alameda County, whose officers are the respondents E. T. Gorie, president; I. R. Whitney, vice president; O. E. Asman, treasurer, and J. B. Muir, secretary;

Stockton Retail Coal Dealers' Association, whose officers are the respondents H. B. Higgins, president; C. W. Minnahan, vice president; R. E. Wilcox, secretary, and I. F. Stien, treasurer;

Richmond Retail Fuel Dealers' Association, of which E. H. Higgins is president and Robert Dornan is secretary;

Sacramento Retail Fuel Dealers' Protective Association, which has as its officers respondents Fred Horrell, president; George Boncfoy, vice president; W. S. Davies, treasurer, and F. A. Ferretta, secretary;

San Jose Feed & Fuel Dealers' Protective Association, with the respondents Charles T. O'Connell, president, and J. J. Bennetts, secretary;

Peninsula Fuel Dealers' Association, with respondents J. B. Perry, president; R. H. Hughes, vice president, and W. O. Horabin, secretary;

Southern California Fuel & Feed Dealers' Association, with respondents H. R. Slayden and W. E. Shelden, secretary.

Among the direct members are Yolo Feed & Fuel Co., under which trade name and style the respondents C. G. Epperson and O. F. Fisher, copartners, do business, and the Marin Feed & Fuel Co., with respondent J. V. B. Cheda as its general manager.

Respondent L. R. Rosenberg is a local association member belonging to Retail Coal & Wood Dealers' Association of Alameda County, Calif.

There is no evidence that respondents A. C. Schlosser and F. P. Grady are either direct or indirect members of the State association or any of the respondent local associations, or that they or either of

Findings.

9 F. T. C.

them participated in or had any connection with any of the acts and practices hereinafter described.

PAR. 3. A legitimate retail coal dealer, as defined and maintained by the respondent association, and therefore one eligible to membership in the State association or one of the local associations, is a dealer engaged in the sale of coal as a regular business—that is to say, buying coal for the purpose of resale to the public in retail quantities, and who maintains an office and yard, displaying a sign, with a stock of coal and scales and equipment for properly weighing same. In the State of California there are approximately 800 so-called legitimate retail coal dealers and about 500 of them are members of the State association; about 400 of these 500 are such members through affiliation with local associations, while 100 are direct members of the said association.

PAR. 4. Respondents Blue Diamond Coal Co., Standard Coal Co., Liberty Coal Co., Lion Coal Co., Gunn Guealy Coal Co., King Coal Co., Lion Rock Springs Coal Co., Standard Coal Co. of California, Bear Fuel Co., Royal Coal Sales Co., Superior Rock Springs Coal Co., Central Coal & Coke Co., and Utah Fuel Co., are persons, firms, or corporations owning or operating coal mines and producing or selling coal, or are persons, firms, or corporations who are sales agents representing the producer in the sale of its coal. These respondents will be hereinafter designated as producers.

Some of these producers maintain a selling force in California in charge of an agent or representative. Among these representatives are the respondents J. S. Critchlow, who represents the Liberty Coal Co.; Frank J. Foran, who represents the King Coal Co., Fred Bosner, who represents the Lion Rock Springs Coal Co., Frank C. Coxhead, who until his death, which occurred since the hearings in this matter, represented the Standard Coal Co. of California, E. W. Matson, who represents the Bear Fuel Co. and Royal Coal Sales Co., Frank Craig, who represents the Superior Rock Springs Coal Co., Charles R. Allen, who represents the Central Coal & Coke Co., and William H. Myers, who represents the Utah Fuel Co.

None of the above-named respondents or their representatives is now or ever has been a member of the said respondent State association. Prior to the year 1922, in some instances, producers or their representative wholesalers were admitted to associate membership in the Retail Coal & Wood Dealers' Association of Alameda County.

PAR. 5. The mines where most of the coal sold in the State of California is produced are situated in the States of Utah, Wyoming, and New Mexico, wherefrom the coal is shipped into the State of California. The method of its sale and distribution among the consumers in California is as follows: The producer, through its repre-

sentative, solicits orders for coal from the retail dealers, and upon receiving an order, the representative transmits it to the producer located outside the State of California. This producer causes the coal to be transported from such State wherein it has been produced, or mined, into the State of California, consigned directly to the retail dealer, who sells it to the consumer. Payment therefor is usually made by the retail dealer to the producer, either direct or to its representative in the State of California, who thereupon remits the same to his or its principal, who, as heretofore stated, is located in Utah, Wyoming, or New Mexico. These producers compete with each other in the sale of coal to the retail dealers, and the retail dealers compete with each other in the sale of coal to the consumers in California.

The producer or its representative, as a general practice, neither maintains a yard nor carries a stock of coal in the State of California. The retail dealers likewise do not carry a substantial stock of coal, and the coal shipped in commerce to purchasers thereof in the State of California is usually mined in the States of Wyoming, Utah, and New Mexico, after receipt of orders therefor by the producer.

PAR. 6. There have been organized, operated, and conducted, during the five years last past, in the State of California, various cooperative associations which purchase for resale or distribution among their members and customers, coal and other commodities; among them are the Hayward Poultry Producers' Association, at Haywood, Alameda County, Calif.; the United Purchase & Selling Corporation, at San Rafael, and the Yolo County Purchasing & Selling Corporation, at Woodland. The coal and other commodities purchased by such associations are sold or distributed by them, and all of them, at a profit satisfactory to them. These cooperative associations are not "legitimate" retail coal dealers according to the standard of respondent associations, as evidenced by the following utterances of their authorized exponents at the annual convention of respondent, California Retail Fuel Dealers Association, in April, 1921:

J. T. Renas, president of the Alameda Retail Coal & Wood Dealers' Association of Alameda County, Calif., in a report to the general body said that great trouble had been experienced because "outlaw coal operators had been shipping coal into that territory to the so-called cooperative stores and consumers' leagues."

In his annual report to the body, George A. Burns, president of respondent State association, said:

Alameda County has had considerable trouble with shipments of outlaw coal from Utah.

Findings.

9 F. T. C.

The respondent California Fuel Dealers' Association publishes and supports as its official organ a magazine known as "The Retail Coal Dealer," which it distributes among its members, direct and indirect, and circulates generally among the retail fuel dealers of California. One of the purposes of this official organ is advisement of the membership of respondent associations and retail fuel dealers generally, respecting the existence or activities of wholesalers or producers furnishing said cooperative associations with coal, and in respect to the activities of all other persons, partnerships or corporations engaged in the retail coal business in California, considered illegitimate coal dealers by respondent associations because of failure to conform to the standard such associations seek to maintain. Its manager and editor is respondent J. B. Muir, who is also secretary of the respondent State association and the Retail Coal & Wood Dealers' Association of Alameda County. In the course of the five years last past, the respondent, California Retail Fuel Dealers' Association, its officers, executive committee and members, including both its direct and indirect membership, as hereinbefore described, have combined among themselves and have cooperated together and with others to prevent, and from time to time prior to 1923, have in fact prevented, cooperative associations such as the said Hayward Poultry Producers' Association, United Purchase & Selling Corporation, and Yolo County Purchasing & Selling Corporation from obtaining adequate or sufficient supplies of coal for their business from the producers of coal in Utah, Wyoming, and elsewhere, or their representatives at the price or prices charged members of respondent associations or other competitors engaged in the sale or distribution of coal in California.

Respondent California Retail Fuel Dealers' Association, acting by and through its president and secretary, and thereunto authorized and supported by the cooperation aforesaid of its direct and local association members, has so prevented said cooperative associations from obtaining their necessary supplies of coal in Utah, Wyoming, or elsewhere, by ascertaining the origin or source of coal shipped to them in California and thereafter remonstrating with the coal operators in Utah or elsewhere responsible for such shipments, and protesting against the sale and transportation of coal to said cooperative associations in California. In accomplishing such result the respondent State association has also published the names of the coal operators furnishing the Hayward Poultry Producers' Association with coal in the said official organ, "The Retail Coal Dealer," which, as hereinbefore stated, circulates among the members of respondent associations and retail coal dealers generally in California. This action had the capacity and tendency to influence such members of respondent associations and other retail coal dealers in California

to refrain from purchasing coal of the coal operators so named in said official organ, and also to influence producers of coal in Utah and elsewhere or their representative to refuse to sell or ship coal to the said cooperative associations in California, on account of the threatened loss of business. In some instances, as an effect of these practices by respondent State association, the producer of coal in Utah, or its representative, after acceptance of orders of coal from the Hayward Poultry Producers' Association, diverted cars of coal already in process of transportation to it in California to other dealers in said State recognized by respondent association as legitimate retail coal dealers, to the serious inconvenience and prejudice of said cooperative association.

PAR. 7. There is no evidence that the respondents, or any of them, mentioned in section 3 of the caption hereof,¹ either participated in or were directly or indirectly responsible for the acts and practices, or any of them, of the respondent associations, their officers and members. On the contrary, in two instances—one involving the Standard Coal Co. of California and the other involving the Utah Fuel Co.—these said respondents submitted to coercion of the respondent State Association such as described in paragraph 6 hereof, instead of conspiring or combining with it; the former, Standard Coal Co. of California, refusing to sell coal at wholesale prices to the Yolo County Purchasing and Selling Corporation, and the latter, Utah Fuel Co., likewise refusing orders for coal from the Hayward Poultry Producers' Association, both at the instance of and under pressure from the respondent, California Retail Fuel Dealers' Association.

CONCLUSION.

The practices of the respondents, California Retail Fuel Dealers' Association, and of its officers and members, the latter, including respondent local associations and direct members, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the 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 upon the complaint of the Commission, answers of respondents, the testimony, evidence, stipulation and briefs of counsel, and the Commission having made its findings

¹ See footnote on p. 412.

Order.

9 F. T. C.

as to the facts, with its conclusion that the respondents, California Retail Fuel Dealers' Association, its officers and members, including the respondent local associations, have violated the provisions of the 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 hereby ordered, That the California Retail Fuel Dealers' Association, its officers, executive committee, agents, employees and members, including respondents, Retail Coal & Wood Dealers' Association of Alameda County, Stockton Retail Coal Dealers' Association, Richmond Retail Fuel Dealers' Association, Sacramento Retail Fuel Dealers' Protective Association, San Jose Feed & Fuel Dealers' Protective Association, San Francisco Retail Coal Dealers' Association, Peninsula Fuel Dealers' Association, Southern California Fuel & Feed Dealers' Association, and the officers and members of each and all of them, and respondents C. G. Epperson and O. F. Fisher, copartners, doing business under the trade name and style Yolo Feed & Fuel Company, V. J. B. Cheda and L. R. Rosenberg, and the agents and employees of them and each of them, forever cease and desist from—

Combining among themselves or cooperating together or with others to give, and from giving, directly or indirectly, notice or notices or information, in the "Retail Coal Dealer," or in any other magazine, newspaper, or printed matter, or otherwise, whether oral or written, to the members of respondent California Retail Fuel Dealers' Association, or respondent local associations, or others, as to or concerning the name or identity of any wholesaler or producer of coal in Utah, Wyoming, or elsewhere other than in the State of California, selling or shipping coal to the Hayward Poultry Producers' Association, or other cooperative association in California, or other persons, partnerships or corporations engaged in the sale and distribution of coal in California, and from combining among themselves, or cooperating together or with others, to give, and from giving, directly or indirectly, notice or notices, either oral or written, to wholesalers or producers of coal in Utah, Wyoming, or elsewhere than in the State of California, engaged in interstate commerce, or to their agents, brokers or other representatives, having the effect of inducing, coercing or compelling such wholesalers or producers of coal, their agents, brokers or other representatives, to refuse to deal with or sell to the Hayward Poultry Producers' Association, or other cooperative associations, upon the same terms and at the prices usually accorded by said wholesalers or producers of coal to retail dealers in coal who are members of, or affiliated with, the respondent associations, or any or either of them, and from cooperating together

or with others in using any scheme, device or means whatever, directly or indirectly, to hinder, obstruct or prevent such cooperative associations, or any of them, or others lawfully engaged in the sale and distribution of coal in California, from freely purchasing or obtaining coal in interstate commerce, in the course and conduct of their business, or from freely competing in interstate commerce with members of the respondent associations, or any of them.

It is further ordered, That respondent, California Retail Fuel Dealers' Association, within sixty days from and after notice hereof, file with the Commission a report in writing, stating the manner and form in which it has complied with and conformed to this order.

And it is further ordered, That this proceeding be dismissed as to respondents A. C. Schlosser, F. P. Grady, Blue Diamond Coal Co., Standard Coal Co., Liberty Coal Co., J. S. Critchlow individually and as agent of the Liberty Coal Co., Lion Coal Co., Gunn Guealy (Quealy) Coal Co., King Coal Co., Frank J. Foran individually and as vice president of the King Coal Co., Lion Rock Springs Coal Co., Frank Bosner individually and as manager of said Lion Rock Springs Coal Co., Standard Coal Co. of California, Bear Fuel Co., Royal Coal Sales Co., E. W. Matson individually and as agent for said Royal Coal Sales Co., Superior Rock Springs Coal Co., Hugh Crea individually and as agent of said Superior Rock Springs Coal Co., Central Coal & Coke Co., Charles R. Allen individually and as agent of said Central Coal & Coke Co., Utah Fuel Co., and William H. Myers, individually, and as agent for said Utah Fuel Co.

Complaint.

9 F. T. C.

IN THE MATTER OF
BROOKS OIL CO. AND E. A. BENEDICT.

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

Docket 974—November 25, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, and a salesman of said corporation, sold a paint of inferior quality neither used by the Government nor made in accordance with its specifications, in containers labeled "U. S. Quality, Ready Mixed Paint," and "U. S. Quality Mixed Paint, Ready for Use," without placing its name thereon as the manufacturer, and chiefly to concerns engaged under such names as "Army and Navy Stores," "U. S. Surplus Stock Stores," etc., in the sale of army and navy surplus goods; with the result that ultimate purchasers were induced to buy said paint so labeled as and for a product made for the use of the Government and in accordance with its specifications:

Held, That the sale of products labeled as above set forth constituted an unfair method of competition.

Mr. Robt. N. McMillen for the Commission.

Mr. Albert Mendelson, of Cleveland, Ohio, 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 Brooks Oil Co., sometimes trading under the name of Para Paint Co., and E. A. Benedict, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Brooks Oil Co. is a corporation organized under the laws of the State of Ohio and having its principal office and place of business at Cleveland in said State. Said respondent is engaged in the manufacture and sale of paints, oils, and similar products to the trade and consuming public. In selling its lower grade paints respondent also uses the trade name Para Paint Co. In the course of its business respondent causes a substantial portion of the products manufactured by it to be transported from the State of Ohio to purchasers thereof in other States and Territories of the