

Syllabus

IN THE MATTER OF
MID-WEST RETAIL COAL ASSOCIATION ET AL.

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

Docket 1118—May 15, 1926

SYLLABUS.

Where a membership corporation composed of retail coal dealers, one of the principal objects of which was directed at relieving the situation created by the purchase and sale of coal in carload lots by church organizations, farm clubs or bureaus, farmers elevator companies, cooperative societies, etc., in competition with "regular" dealers engaged in the retail coal business throughout the year, and equipped with office, telephone connection, storage bins, private weighing scales, delivery vehicles, etc.; and the members of such corporation;

- (a) Applied the designation and description "snow bird" to coal shipped to the aforesaid organizations, etc., and to the shippers and recipients thereof, with the exception of those using coal industrially for steam purposes;
- (b) Requested of and secured from the members and others information as to "snow birds" and "snow bird" shipments, advising and cooperating with the members in securing the same;
- (c) Advised "snow bird" vendors that it was against the policy of the association and its members and that of "regular" retail coal dealers to purchase coal for their own trade from those who made shipments in carload lots to consumers direct or to those designated as "snow birds," when located in the territory served by one or more regular dealers, and endeavored to persuade such vendors to refuse to supply further consumers and snow bird dealers with coal;
- (d) Set forth the aforesaid policy through articles and editorials in the association paper from time to time, and represented to coal producers, jobbers and wholesalers, that lists containing the names of those who sold coal to consumers, or "snow birds," or permitted others who obtained coal from them, so to sell the same, in the members' territory, would be published in such paper;
- (e) Published lists of "snow bird" shippers, shipments, and consignees, together with articles and editorials, urging the members and the regular retail trade to confine their purchases to producers, etc., who made it a policy not to ship "snow bird," coal, and denouncing "snow bird" shippers and consignees;
- (f) Acted in combination and agreement with a corporation engaged in the publication of a "Coal Dealers' Blue Book" and in supplying subscribers with an exchange service consisting of confidential information relative to the business, credit, etc., of individuals and concerns engaged in the coal business, which book and service constituted one of the most influential sources in the United States for the kind of information therein provided and particularly for the territory herein concerned, in listing certain dealers and shippers as "snow birds," as above set forth, and later in eliminating

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entirely the names of those so regarded, by supplying said corporation with the requisite information; with the intent and effect of discriminating against the aforesaid dealers and their customers, in favor of the members and other regular dealers in the purchase and sale of coal;

With the result that producers, jobbers, and wholesale coal dealers were caused to refuse to sell to those purchasers against whom the aforesaid efforts were directed, purchase of coal by the aforesaid organizations, etc. at wholesale prices, which tended to lower the retail price thereof, was prevented and hindered, competition between the members, producers, jobbers, wholesalers, and other retailers in the coal business was unduly hindered and restrained, and the public was deprived of the advantages in lower coal prices and otherwise, which it would have enjoyed if competition in the sale and distribution thereof had been free and unrestrained:

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

Mr. Edward E. Reardon for the Commission.

Mr. William R. Schneider and *Mr. D. C. Allard*, of St. Louis, Mo., for respondents, *Mr. William R. Schneider* also appearing for respondent *H. R. Oglesby*, individually and as second vice president of Mid-West Retail Coal Association, along with *Mr. M. D. Aber*, of Warrensburg, Mo.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Missouri State Retail Coal Merchants Ass'n (later calling itself the Midwest Retail Coal Ass'n), a Missouri corporation, its officers, its members, numbering some 150 retail coal dealers doing business in the States of Missouri, Arkansas, and Illinois; and respondent J. B. Sanborn Co., an Illinois corporation with principal place of business at Chicago, engaged in the publication of a trade directory of producers, wholesalers and retailers of coal in the United States, circulated throughout the trade, and in the operation of a department in connection therewith for furnishing subscribers, upon request, with information concerning the credit rating, etc., of persons in the trade; with undertaking and cooperating together to confine distribution to the so-called "regular" channels of trade, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondents, regarding the channel flowing from producer and whole-sale dealer in coal to the so-called regular legitimate retail dealer¹

¹ Defined as "any individual, firm or corporation regularly engaged in the business of selling coal, coke or other fuel with facilities and stock sufficient to meet the reasonable demand of the public in his community"—the test of eligibility for membership in respondent association, incorporated into the constitution thereof—all others being regarded as "irregular" or "illegitimate" dealers.

and from such retail dealer to the consumer, as the sole channel through which coal should be distributed from producer to consumer, and as the legitimate or regular channel of distribution—

“For more than a year last past * * * have undertaken and cooperated together in preventing the distribution of coal in the territory served by respondent association members, by any other means or through any other channel than through aforesaid so-called regular channel, and to prevent aforesaid so-called irregular dealers, cooperative purchasing associations and groups, and other consumers from obtaining coal at wholesale prices or from any other source than so-called regular dealers,” and in order to carry out their aforesaid mutual purposes, have cooperated together and with each other in the following acts and practices:

Soliciting, securing and furnishing information as to the names and activities of “irregular” dealers; the bringing of pressure to bear upon the vendors of coal to such irregular dealers through persuasion, boycotts and threats thereof, publicity and condemnatory articles in the association journal (circulated among the association members and the producers and wholesalers who supply the same with coal), and other means of intimidation, to cease supplying such irregular dealers; urging the members and the trade generally through articles or editorials in said journal to cooperate in the undertaking herein charged; publishing in said journal names of irregular dealers, purchasing associations, and groups and the concerns supplying the same, with derogatory comment and the intimation or suggestion that the legitimate dealers boycott the wholesalers concerned until they cease offending; publication therein of advertisements of only those wholesalers limiting their sales to the regular channels, with the recommendation that the members and others restrict their purchases to such advertisers; furnishing respondent Sanborn & Co. with names and information concerning regular and irregular dealers and purchasers, said Sanborn & Co. cooperating by including in its directory only the former, or identifying the latter as such; seeking and securing the cooperation of producers and wholesalers in the undertaking charged and in connection therewith furnishing the same with information concerning irregular dealers or purchasers, Sanborn & Co. also cooperating, as charged, with respondent association in such undertaking; and using other equivalent cooperative means.

All with the effect of constraining “producers and wholesalers of coal to confine the distribution of coal in the territory served by respondent association members to aforesaid regular channel selected and approved by respondents, and to prevent so-called irregular

dealers, cooperative associations and groups of purchasers, and consumers seeking to buy coal at wholesale in said territory from securing coal at wholesale or from any other source than from so-called regular or legitimate retail dealers, with the result that competition in the distribution and sale of coal in said territory has been and is unduly obstructed and hindered, and consumers therein 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."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above-named respondents, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

All the respondents have filed their answers herein excepting the respondents Mid-West Retail Coal Association, F. W. Schramm and F. A. Parker. Formal hearings were had before an examiner of the Commission at which all of the above-named respondents appeared by counsel, and testimony was taken and evidence introduced on the part of the Commission in support of the charges stated in the complaint and by the respondents in opposition thereto.

Thereupon this proceeding came on for decision before the Federal Trade Commission, and upon the testimony and evidence and upon the briefs filed on the part of the Commission and the respondents, excepting the J. B. Sanborn Co., and upon argument of counsel for the Commission, no one appearing to argue on behalf of the respondents or any of them, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Mid-West Retail Coal Association, is a membership corporation organized on or before December 15, 1920, under the laws of the State of Missouri under the name of Missouri State Retail Coal Merchants' Association, the name being changed to Mid-West Retail Coal Association in or about the month of May, 1922. It has its principal office or place of business in the city of St. Louis, Mo.

PAR. 2. The by-laws of the respondent coal association provided that the officers of the association were to be a president, four vice presidents, a secretary, a treasurer, and ten directors with a commissioner; that the officers were to serve for one year and until their successors were elected and qualified, and that the officers were to perform the duties usually devolving upon such officers or such duties as would be directed by the board of directors. The by-laws also provided that the president, vice presidents, secretary and treasurer were to be elected by the state convention, and that the commissioner was to be elected by the board of directors.

PAR. 3. The respondents, R. D. Kelly, W. A. Storrs, H. R. Oglesby, P. L. Rupp, F. W. Schramm, F. A. Parker, F. W. Autenrieth, E. J. Wallace, and Arthur M. Hull were, respectively, the president, vice president, second, third, and fourth vice presidents, secretary, treasurer, commissioner, and executive secretary of the respondent coal association during the year 1923.

PAR. 4. The respondents, S. P. Guthrie, W. R. Creasey, J. B. Hallquist, V. C. Elmore, W. F. Sprague, G. V. Montague, Frank Wilmes, H. F. Shrankler, William Farrell, and J. E. Cowling were, respectively, directors of the respondent coal association and constituted its board of directors during the year 1923.

PAR. 5. The respondents, R. D. Kelly, W. A. Storrs, H. R. Oglesby, P. L. Rupp, F. W. Schramm, F. A. Parker, F. W. Autenrieth, S. P. Guthrie, W. R. Creasey, and H. F. Shrankler were officers or directors of the respondent coal association in 1921 and 1922.

PAR. 6. Respondent E. J. Wallace was elected commissioner of the association by the board of directors thereof at the time of the organization of the said association and was reelected by the board of directors thereof from year to year thereafter, including the years 1920, 1921, 1922, 1923, and 1924.

PAR. 7. By an article in its constitution it was provided that individuals, firms or corporations engaged in the business of selling coal, coke or other fuel at retail, with facilities and stock sufficient to meet the reasonable demands of the public in their respective communities were eligible to become members of the respondent Mid-West Retail Coal Association.

PAR. 8. In June, 1922, the commissioner of the association was empowered to arrange the provisions under which shippers and jobbers in fuel could be admitted as associate members of the association, but no shippers or jobbers have been admitted to membership.

PAR. 9. In the year 1921 there were 124 members in the association who had paid their membership dues for that year.

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PAR. 10. In the year 1922 the number of members of the respondent coal association who had paid membership dues for that year was 147, and included in the membership for the year 1922 there were a few members from the States of Arkansas and Illinois.

PAR. 11. As early as the month of May, 1923, 57 members of respondent coal association, including a number of members from the State of Illinois, had paid membership dues for the year 1923.

PAR. 12. All of the individual respondents were members of the Mid-West Retail Coal Association during the years 1921, 1922 and 1923, with the exception of Arthur M. Hull.

PAR. 13. As set forth in the by-laws of the respondent association its objects were to establish and maintain just and equitable principles of trade, to gather and diffuse accurate and reliable information regarding the cost and methods of handling and distributing coal at retail, and to cooperate with the officers of the Federal, State and municipal governments in all matters pertaining to the retail coal business.

PAR. 14. The directors gave to respondent Wallace as commissioner of the association full power to deal with all matters pertaining to the organization. As commissioner he was the executive officer of the association and its manager.

PAR. 15. The respondent retail coal association published or caused to be published a trade paper called "The Missouri Coal Man." From January, 1921, until July 1, 1923, the said trade paper was published under the direction of respondent association's commissioner, respondent E. J. Wallace. After July, 1923, respondent Arthur M. Hull, executive secretary of the respondent coal association, published the said trade paper, the name of which was changed to "The Coal Retailer."

PAR. 16. The said trade paper carried an announcement on its editorial page as follows:

Published monthly from the office of the Commissioner, E. J. Wallace, Pierce Bldg., St. Louis, for the confidential use of our members only.

Complaints of snowbirding should be sent to the secretary, Fred A. Parker, * * *.

The Commissioner takes care of advice on rate exchanges, contract violation, I. C. C. rules, Missouri laws, and general complaints.

PAR. 17. The above announcement was carried in every issue of the trade paper, as well as the following announcement, printed on the front page of the trade paper:

Official Organ of The Missouri Retail Coal Dealers' Association.

PAR. 18. Prior to the organization of respondent coal association it was and still is a common occurrence throughout not only Missouri, Illinois, Arkansas, and the adjoining States, but in other States, for

many individuals, firms, corporations, organizations, or associations of individuals, including church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies, located in said States, who have not previously sold or distributed coal to consumers, or who are not and have not been engaged in the business of selling coal at retail throughout the year and who are not and have not been partly or wholly equipped as some retail dealers are, who are regularly engaged throughout the year in the sale of coal at retail, that is, with an office for doing business, telephone connection, storage bins, private weighing scales, delivery vehicles, etc., to purchase coal from coal-mine operators, jobbers of and wholesale dealers in coal, at wholesale prices and in carload lots, for the purpose of selling it at retail for profit on the part of the said individuals, firms and corporations, and for the purpose on the part of the said church and farm organizations, associations or cooperative societies of distributing it among their members for consumption or to other consumers in their vicinity, generally, at a lesser price to said organizations or their members or said other consumers, than the retail price at which the coal was regularly offered for sale and sold by others, including the individual respondents and members of the respondent association in their respective localities.

PAR. 19. The State of Missouri has about 30 out of a total of 115 counties which produce coal, and some of these counties produce only a few hundred tons per year, being local mines that do not load any railroad coal at all, and some of the mines in Missouri are worked by only a half dozen farmers during certain periods of the year.

PAR. 20. The source of supply of coal for the State of Missouri and the territory to which the respondent association extended its activities was and is coal mined principally in the States of Arkansas, Illinois, Iowa, Kansas, Missouri, Oklahoma, and some from West Virginia and eastern Kentucky.

PAR. 21. In the year 1911 the production of coal in the above States in net tons was approximately as follows: Arkansas, 2,106,789; Illinois, 53,679,118; Iowa, 7,331,648; Kansas, 6,254,228; Missouri, 3,670,607; and Oklahoma, 3,074,242.

PAR. 22. In the year 1921 the production of coal in the above States in net tons was approximately as follows: Arkansas, 1,400,000; Illinois, 67,500,000; Iowa, 5,000,000; Kansas, 3,600,000; Missouri, 3,700,000; and Oklahoma, 3,300,000.

PAR. 23. In 1921 and 1922 in the above States, including northern Texas with Oklahoma, there were 146,000 miners engaged in pro-

ducing coal, of which only about 8,000 were employed in the State of Missouri.

PAR. 24. Ninety-nine per cent of the requirements of all eastern Missouri for coal come from Illinois, the other 1 per cent used in eastern Missouri being a little smokeless, anthracite, or Arkansas coal, or some other coal, not produced in Missouri. The coal used in western Missouri comes principally from Illinois, Iowa, Kansas, Arkansas, and Oklahoma, together with some comparatively small amount of coal that is produced in the State of Missouri. There is considerable coal from West Virginia and eastern Kentucky shipped into Kansas City, Mo., and one or two other places in the western part of the State, and in the eastern part of the State there is also a large volume of smokeless coal from West Virginia and some coal from eastern Kentucky shipped into Missouri.

PAR. 25. Retail dealers of coal in Missouri, including members of respondent association and others engaged in the retail coal business in Missouri regularly throughout the year and equipped with an office for doing business, telephone connection, storage bins, private weighing scales, delivery vehicles, etc., and numerous individuals, firms, corporations, church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies, not regularly engaged in the coal business and equipped with only a part or none of the aforesaid equipment of dealers regularly engaged in the retail coal business throughout the year, have purchased and continue to purchase, in carload lots, practically all the coal which they consume or in which they deal or which they distribute, from producers, jobbers of or wholesale dealers in coal, whose mines or stocks of coal are located principally in the above States, other than Missouri, which are the principal source of supply of coal for Missouri.

PAR. 26. Producers, jobbers of or wholesale dealers in coal, who sell in carload lots, carry practically no stock or stocks of coal excepting the coal located directly at the mine, and the coal so purchased from the said producers, jobbers of and wholesale dealers in coal as aforesaid has been purchased from stocks of coal located at the time of purchase thereof in States other than Missouri, and has been and is caused to be transported, in consequence of such purchase and sale to, into and through States other than those in which the shipment originates, and including the States of Missouri, Illinois, and Arkansas, to the purchasers located therein.

PAR. 27. Producers, jobbers of and wholesale dealers in coal who are located in States other than the State of Missouri, which are the source of supply of coal for the States of Missouri, Illinois, Arkansas,

and Iowa, have sold prior to and during the years 1920 to 1924 and continue to sell coal, from stocks thereof located at the time of sale in States other than Missouri, in carload lots, among others, to many consumers located, respectively, in cities, towns or communities in the State of Missouri in which members of the respondent association and other retail dealers in coal, regularly engaged in the retail coal business and having part or all of the aforesaid equipment for the conducting of said business, are located, and in consequence of such sales the said producers, jobbers and wholesale dealers have caused the coal so sold by them to be transported from States other than the State of Missouri, to the said consumers, the purchasers thereof, located in the State of Missouri.

PAR. 28. In the sale of coal as aforesaid to consumers in the State of Missouri the producers, jobbers of and wholesale dealers in coal above referred to have been and continue to be in competition, in commerce, with each other, with the individual respondents, with members of respondent association and with other retail dealers in coal in the State of Missouri.

PAR. 29. Retail dealers of coal in Missouri, including members of respondent association and others engaged in the retail coal business in Missouri regularly throughout the year and equipped with an office for doing business, telephone connection, storage bins, private weighing scales, delivery vehicles, etc., and individuals, firms, corporations, church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies, not regularly engaged in the coal business and equipped with only a part or none of the aforesaid equipment of dealers regularly engaged in the retail coal business throughout the year, in the purchase of coal in carload lots aforesaid from producers, jobbers of or wholesale dealers in coal, have bought the coal from stocks thereof located at the time of the purchase in States other than Missouri, with the intention of having the same transported from points in said States outside of the State of Missouri to themselves, respectively, located at various points in the State of Missouri, to be by them, respectively, consumed, sold or distributed to other consumers, and the said coal has been so purchased and transported to them, continuously, prior to and since the year 1920 to the present date, and the said retail dealers, including members of the respondent association and others, are and have been in competition in commerce with each other, with said individuals, firms, corporations, church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' ele-

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vator companies and cooperative societies, aforesaid, in the purchase, shipment, distribution and sale of the coal aforesaid.

PAR. 30. One of the principal purposes of the members of the respondent association in organizing the Missouri State Retail Coal Merchants' Association (later the Mid-West Retail Coal Association) was to relieve the situation created by the competition of the individuals, firms, corporations, church organizations, farmers' cooperative clubs, etc., who had not previously bought coal in carload lots, or who bought coal in carload lots for their own use or for resale or distribution to consumers, and who were not and had not been equipped partly or wholly as some retail dealers as above stated, by persuading and trying to persuade the coal mine operators, wholesale dealers and jobbers in coal from selling coal in carload lots or wholesale quantities direct to the consumer or to the said individuals, firms, corporations, excepting those using coal industrially for steam purposes, to church organizations, farmers' cooperative clubs, etc., located in any city, village or community of Missouri in which one or more of the members of respondent association or other retail dealer in coal, equipped as aforesaid, was also located and doing business.

PAR. 31. The respondents designated and described as "snowbird coal" coal sold by producers and jobbers thereof and wholesale dealers therein in carload lots to individuals, firms, corporations excepting those using coal industrially for steam purposes, to organizations or associations of individuals, including church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies, who bought the same for their own consumption or who had not previously sold or distributed coal to consumers, and who are not and have not been engaged in the business of distributing or selling coal at retail throughout the year, and who were not and are not equipped partly or wholly as some retail dealers are and have been, as above stated.

PAR. 32. The respondents designated and described as "snowbird" shippers those producers and jobbers of and wholesale dealers in coal who sold and shipped coal designated and described by the respondents as "snowbird coal," as above stated.

PAR. 33. The respondents designated and described as "snowbirds" the individuals, firms, corporations excepting those using coal industrially for steam purposes, organizations or associations of individuals, including church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies, above referred to, to whom "snowbird coal" had been sold and shipped as above set forth.

PAR. 34. The trade paper of the respondent association, the Missouri Coal Man, later called the Coal Retailer, was regularly distributed to all members of the respondent association. It was published monthly and there were from one thousand to fifteen hundred copies of each of the first issues and later the number of copies of each issue was increased to five thousand, which were distributed, besides to the members of the respondent association, to retail dealers principally in Missouri, Arkansas, Iowa, Wisconsin, and Illinois. In February of 1922 the circulation of the said trade paper amounted to three thousand copies and it was distributed as follows to retail coal dealers:

Missouri-----	971	Kansas City-----	47
Arkansas-----	66	Iowa-----	987
Louisiana-----	39	Wisconsin-----	100
Mississippi-----	85	Illinois-----	326
St. Louis dealers-----	96		
Memphis, Tenn-----	17	Total-----	2,678

The remainder of the three thousand copies of the issue of February, 1922, went to shipping companies in St. Louis, Chicago, Kansas City, a few in Birmingham, and a few in Memphis.

PAR. 35. The respondent association, through respondent E. J. Wallace, commissioner of respondent association, and by notices published in its said trade paper and otherwise from time to time during 1921 to 1924 requested its members and others interested to report to the secretary of the association the names of all "snowbirds" known to them and the names of consignees, car numbers, dates of arrival of cars, kind of coal shipped and waybill reference showing the shipping point and the names or initials of shippers of coal described as "snowbird coal," as aforesaid, and requested and advised the members of the association and others interested to get such information among other ways from railroad agents, indirectly and by subterfuge, if necessary.

PAR. 36. Very numerous reports were received by the respondent association pursuant to its said requests, secretly, confidentially and otherwise, during the years 1921 to 1924, from the individual respondents, members of the respondent association and others, giving one or more of the particulars referred to above regarding so-called "snowbirds" and shipments of so-called "snowbird coal," and following the receipt of such information, and with its assistance, the respondent association and its members, through respondent Wallace, commissioner of the association, and F. A. Parker, its secretary, communicated by letters and otherwise with shippers and dealers connected with the said shipments and with others, and traced the shipments involved and learned the names and addresses of the

vendors and consignees thereof throughout the entire course of trade in the same, generally, from the mine to the consumer.

PAR. 37. When the shipments of so-called "snowbird coal" were traced as above stated and the names and addresses of the vendors and the consignees were learned, the respondent association, through its said commissioner, respondent E. J. Wallace, and its secretary, respondent F. A. Parker, communicated in such instances with the vendors and represented to them that it was against the policy of the association and its members and that of so-called regular retail coal dealers to purchase coal for their own retail trade from coal producers, jobbers of and wholesale dealers in coal who sold coal in carload lots to consumers direct, or to others whom they described as "snowbirds," when located in the territory served by one or more retail dealers in coal, regularly engaged in the said business and equipped with office, telephone, storage bins, scales, etc., referred to as regular retail dealers, and the respondent association through respondent E. J. Wallace as its commissioner and through its said secretary, F. A. Parker, thereby endeavored to persuade said vendors to refuse to further supply said consumers and dealers referred to as "snowbirds" with coal in carload lots.

PAR. 38. The respondent association and respondent members, through the said E. J. Wallace as commissioner and F. A. Parker as secretary, through its said trade paper and otherwise during the period from 1921 to 1924, represented to coal producers, jobbers of and wholesale dealers in coal, generally, and particularly to such as sold and distributed coal consumed in the territory served by the members of respondent association, that lists containing the names of such producers, jobbers and wholesale dealers who sold coal or permitted others, who obtained coal from them, to sell coal to so-called "snowbirds" or to said consumers in said territory, would be published from time to time in the columns of the trade paper referred to so that retail dealers would be informed thereof. These representations were made for the purpose of persuading said producers, jobbers and wholesale dealers from further supplying so-called "snowbirds" or consumers of coal in any community wherein there was located and doing business one or more so-called regular retail coal dealers, equipped as above stated.

PAR. 39. The respondent association, through its said commissioner, E. J. Wallace, caused articles and editorials to appear in the said trade paper during the period from 1921 to 1924, announcing the policy of the members of respondent association and other so-called regular retail dealers not to do business with or to purchase coal from coal producers, jobbers of and wholesale dealers in coal who

sold coal direct in carload lots to consumers or so-called "snow-birds" in the territory served by the members of respondent association, in any community thereof wherein there was located one or more retail dealers in coal, equipped as above stated, or who sold coal knowingly to any other dealer in coal who resold the same to such consumers or so-called "snowbirds" in carload lots.

PAR. 40. The individual respondents and the members of the respondent association, cooperating together through respondent E. J. Wallace as commissioner and respondent F. A. Parker as secretary of the association, published in the various issues of the trade paper, the *Missouri Coal Man*, later the *Coal Retailer*, during the period from 1921 to 1924 lists of shipments of coal in carload lots, sold by coal producers, jobbers of and wholesale dealers in coal, transported from Illinois and other States than Missouri and which were delivered to individuals, firms, corporations, church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies who were not regularly engaged in the coal business and who were equipped with only a part or none of the aforesaid equipment of retail dealers in coal and were located in cities, villages or communities in Missouri in which one or more of the members of respondent association or other retail dealers in coal, equipped as aforesaid with an office, telephone, storage bins, scales, etc., were located.

PAR. 41. The aforesaid lists of shipments published in the trade journal of the respondent association contained, with other information, the names and identification of shippers of the coal, the places of origin of the shipments and the names and locations in Missouri of the said consignees to whom the coal was delivered.

PAR. 42. In the same issues of the respondent association's trade journal in which the aforesaid lists of shipments of coal to so-called "snowbirds" were made by so-called "snowbird" shippers, there appeared articles and editorials urging the members of the respondent association and the retail trade who were equipped in business as aforesaid to confine the purchase of coal for retail distribution by them to coal producers, jobbers and wholesale dealers designated by the association in the trade journal as dealers who had made it a policy not to ship so-called "snowbird" coal or to so-called "snow-birds."

PAR. 43. In the same issues of respondent association's trade journal in which the lists of coal shipments and the aforesaid articles and editorials appeared there were also editorials and denunciatory articles published of and concerning shippers of so-called "snow-

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bird" coal and their consignees, in which scurrilous, abusive and derogatory terms were applied to the said shippers and consignees.

PAR. 44. Respondent, The J. B. Sanborn Co., is a corporation organized under the laws of the State of Illinois, having its usual and principal place of business in the city of Chicago in said State. It is and has been for thirty-six years engaged in conducting a mercantile agency for the purpose of furnishing credit and other information principally to producers, wholesale and retail dealers in coal and to manufacturers in allied industries, such as those supplying equipment to the coal trade.

PAR. 45. In connection with its business the said respondent publishes a trade directory of producers, wholesale and retail dealers in coal in the United States, entitled "Coal Dealers Blue Book," which it leases to subscribers to its mercantile information service, and it also furnishes them with what is called or is known as an "Exchange Service," being confidential information concerning the methods of doing business and the credit of persons or corporations engaged in the production, purchase and sale of coal, coke or other such fuel.

PAR. 46. The J. B. Sanborn Co., in furnishing the Coal Dealers Blue Book and its Exchange Service and the information and service included therein to subscribers, causes the same to be transported from Chicago, Ill., to said subscribers in Missouri and other States, and the said the J. B. Sanborn Co., through its Coal Dealers Blue Book and Exchange Service, is and has been for producers, jobbers of and wholesale dealers in coal, coke and other fuel, particularly for those whose product is and has been sold and distributed in Missouri, Illinois, and Arkansas, one of the largest and most influential sources in the United States of the kind of information and service contained in said publications.

PAR. 47. The Coal Dealers Blue Book and Exchange Service of the J. B. Sanborn Co. are furnished with key numbers which appear after the names listed therein, and these key numbers have or indicate definite meanings with regard to specific information concerning the listed names after which they appear in the Blue Book and in the Exchange Service.

PAR. 48. The mercantile service of the J. B. Sanborn Co. is and was during the period from 1921 to 1924 and prior thereto subscribed to by a large number of operators, wholesale dealers in and jobbers of coal in the States of Missouri, Illinois, and Arkansas, and generally throughout the United States, and the information incorporated in the Blue Book and in the Exchange Service is and was obtained from data secured from various sources, including banks, attorneys, justices of the peace, coal dealers, and associations of coal dealers.

PAR. 49. One of the principal uses made of the service of the J. B. Sanborn Co. by coal producers, jobbers of and wholesale dealers in coal and by retail dealers or others was and is in obtaining from the lists of names published therein the names of those in the coal business who are in the market for the purchase and sale of coal, with whom negotiations for its purchase and sale could be begun, and directories of dealers in the coal trade, including the said Coal Dealers Blue Book, are important and influential aids and instrumentalities in the process of creating and increasing business transactions in the coal business or industry on the part of coal producers, jobbers of and wholesale dealers in coal with retail dealers and consumers thereof.

PAR. 50. The J. B. Sanborn Co., its officers and agents, knowing that the policy aforesaid of the respondent association, its members and its said commissioner, Wallace, was to persuade and prevent coal producers, jobbers of and wholesale dealers in coal from selling or shipping coal in carload lots to the aforesaid persons referred to as "snowbirds" or to consumers, located in the territory served by the respondent association in cities, villages or communities wherein there was one or more retail dealers, members of respondent association, or other dealers having equipment as above described and referred to as "regular retail dealers," combined and agreed with the said respondent E. J. Wallace, as commissioner of respondent association and acting in, for and on behalf of the association and its members, to list in the said Coal Dealers Blue Book, and acting in concert with the said association, its members and its said commissioner, it did list in the said Coal Dealers Blue Book and in the said Exchange Service during the years 1921 and 1922 certain names of persons, firms or corporations, farm clubs or associations, designating the same with the key number "117" to which was ascribed the meaning "snowbirds" or "snowbird" dealers.

PAR. 51. Acting in combination and agreement with the respondent association, its members and its said commissioner, the J. B. Sanborn Co. accepted reports made to it by the respondent Wallace as commissioner of respondent association as to dealers who were deemed properly equipped retail dealers in the territory served by the respondent association, and as to who were not equipped as retail dealers as aforesaid and were therefore "snowbirds" or "snowbird" shippers and thereafter listed the same in the Coal Dealers Blue Book, designating them "snowbirds" or "snowbird" shippers by means of the number "117," placed after their names, respectively.

PAR. 52. Later the J. B. Sanborn Co., acting in concert with the said association, its members and said commissioner, ceased to use the

number "117" in the Coal Dealers Blue Book, in its Exchange Service and otherwise, but instead and in place of designating certain persons as aforesaid with the number "117" as "snowbirds" or "snowbird" dealers, it ceased listing in its said publications those reported to it as "snowbirds" or "snowbird" dealers by respondent association, through its commissioner or secretary or otherwise, whom it had previously listed and designated as "snowbirds" or "snowbird" dealers by the number "117."

PAR. 53. In consequence of the aforesaid action of the J. B. Sanborn Co., hundreds of names of persons, firms, and corporations, of organizations or associations aforesaid, located in the State of Missouri, who had been previously listed as dealers in or buyers of coal in publications of the J. B. Sanborn Co. and who had been consumers thereof or had been engaged in selling coal at less than the regular retail price of other retail dealers including members of the respondent association were eliminated from the listing in the J. B. Sanborn Co.'s said publications, and were deprived thereby of an important aid and instrumentality in the purchase of coal from shippers thereof whose stocks of coal were located in States other than Missouri and from which stocks when coal was purchased, shipments were made to and into Missouri to them, the said purchasers.

PAR. 54. The action of the respondent, the J. B. Sanborn Co., in listing individuals, firms, corporations, farm clubs and others, who bought coal in carload lots from producers, jobbers of and wholesale dealers in coal, in the Coal Dealers Blue Book and the Exchange Service and designating them as "snowbirds" or "snowbird" dealers and the action of said company in eliminating them from listing in the Coal Dealers Blue Book and the Exchange Service was intended to discriminate against and did work a discrimination against such individuals, firms, corporations, farm clubs and others in favor of retail dealers in coal, including the members of respondent association, the individual respondents excepting Arthur M. Hull, and others who were engaged in selling and distributing coal in the same communities in Missouri, and was intended to discriminate against and did work a discrimination also against the said producers, jobbers of and wholesale dealers in coal, who sold to the said individuals, firms, corporations, etc., and in favor of other producers, jobbers of and wholesale dealers in coal who sold coal to retail dealers, including members of respondent association, etc., in that the use and benefit of the Coal Dealers Blue Book as above set forth was made unequal or denied altogether as a means of intercommunication to those purchasers of coal whose names were listed therein as "snow-

birds" or "snowbird" dealers, and whose names were eliminated therefrom, and the producers, jobbers of and wholesale dealers in coal who were and had been selling coal to them.

PAR. 55. There are other individuals or corporations in the United States who furnish to subscribers information and service in publications of the aforesaid kind and character of the J. B. Sanborn Co. and who cause their publications to be transported to their subscribers from the State of origin of their shipments to, into and through other States, including Missouri, Illinois, and Arkansas, and said other individuals and corporations in their publications do not and have not identified or classified buyers or shippers of coal in carload quantities or in any quantities whatsoever, or their said shipments, as "snowbirds," "snowbird" shippers or "snowbird" coal, respectively, or in any manner whatever according to the extent or degree of equipment owned or employed by them in the sale, movement or distribution of coal, coke, or other fuel.

PAR. 56. The competition of the individuals, firms, corporations, church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies not regularly engaged in the coal business and equipped with only a part or none of the equipment of some dealers regularly engaged in the coal business throughout the year, in Missouri, Illinois, Arkansas, in the territory served by the members of respondent association and in other States, has tended to and does tend to lower the retail price of coal, lessen the margin of profit and to reduce the amount of business of retail dealers, including the members of the respondent association and other so-called regular dealers in the above States and in said territory.

PAR. 57. The requests published in the said trade paper, and otherwise made to persons in the coal industry by said respondents, for information concerning shipments of so-called "snowbird" coal and the communication by said respondents of such information, when received by them, including the names and locations of vendors and purchasers, to producers, jobbers of and wholesale and retail dealers in coal by publishing it in the trade paper and otherwise circulating said information as above stated, had a natural tendency to cause and it did cause producers, jobbers of and wholesale dealers in coal located in other States to refuse to sell coal to purchasers located in Missouri whose names were so published, and to cause, and it did cause, retail dealers in Missouri and other States to withhold their patronage from vendors of coal located in States other than Missouri, whose names were so published.

Findings

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PAR. 58. In consequence of the above acts and things done by the respondents, as above set forth, various individuals, firms, corporations, organizations or associations of individuals, including church organizations or members thereof, groups of farmers under the name of farm clubs or farm bureaus, farmers' elevator companies and cooperative societies, located in said States, including Missouri, have been prevented and hindered from securing coal at wholesale prices from coal producers, jobbers of and wholesale dealers in coal who are located in Illinois or in other States than Missouri from whom they had previously bought and received coal in carload lots which had been transported from said other States to and into the State of Missouri to them for the purpose of resale, distribution or consumption.

PAR. 59. The acts and things done by the respondents, above set forth, have tended to and did cause producers of and wholesale dealers in coal, who had previously sold coal to consumers and to individuals, firms and corporations in Missouri, who were not equipped as retail dealers in coal as aforesaid, who were not regularly engaged in the sale of coal throughout the year and who were located in cities, villages and communities, respectively, in which one or more members of the respondent association or other retail dealers equipped as aforesaid were engaged in the coal business, to refuse to sell to them and to confine the sale of their coal to the said retail dealers equipped as aforesaid, including members of the respondent association.

PAR. 60. The above acts, things and practices of respondents have unduly hindered and restrained competition in commerce between respondents and producers, jobbers of and wholesale and retail dealers in coal, and the public are and have been deprived of the advantages, in lower prices of coal and otherwise, which the public would have enjoyed if competition in the sale and distribution of coal had been free and unrestrained, and the said acts, things and practices of respondents are and have been to the injury and prejudice of the public and respondents' competitors.

PAR. 61. Prior to the issuance of the complaint in this proceeding, the respondent, the J. B. Sanborn Co., ceased using the number "117" to designate certain individuals, firms or corporations listed in the Coal Dealers' Blue Book as "Snowbirds," and has not since so designated them in its said publication by the use of the number "117" or otherwise, and has ceased all cooperation with the respondent coal association and the members thereof, in carrying out the practices charged in the complaint against the respondents.

CONCLUSION

The practices of the respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in 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 by the Federal Trade Commission upon the complaint of the Commission and upon the answers of the respondents filed herein, excepting the respondents Mid-West Retail Coal Association, F. W. Schramm and F. A. Parker, who have not made answer to the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and that the respondent, the J. B. Sanborn Co., had ceased the practices charged against it, prior to the issuance of the complaint:

It is now ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice as against the respondent the J. B. Sanborn Co.; and,

It is further ordered, That the respondents above named (other than the respondent the J. B. Sanborn Co.), their agents, representatives, and employees, do cease and desist from undertaking and co-operating together and acting in concert in hindering and preventing, or attempting to hinder and to prevent, directly or indirectly, the purchase and sale of coal in interstate commerce by and between producers, jobbers and wholesale dealers therein, and individuals, firms, corporations, farm clubs, cooperative societies, church organizations or others, consumers of coal or dealers therein, by the following methods:

1. Arbitrarily classifying sellers and purchasers of coal and shipments thereof as "Snowbird" shippers, "Snowbirds" and "Snowbird" shipments, respectively, or by any similar or other terms because of or according to the extent or degree of equipment owned by the said purchasers or employed by them in the sale, movement or distribution of coal, or causing any such classification to be published in any trade paper, or other publication, or to be communicated to others or among themselves, in that or any other manner.

Order

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2. Designating or causing to be designated, in articles or editorials in any trade paper or other publication, or in any other manner or by any other means, any individual, firm, corporation or association, or groups thereof, as the vendor or purchaser of coal, or their shipments of coal by using or causing to be used denunciatory, scurrilous, abusive, or derogatory language of and concerning them or either of them.

3. Soliciting or receiving between or among themselves or with others and/or circulating between and among themselves or with others communications or reports, either printed, written or verbal, having the purpose, tendency or the effect of inducing, coercing or compelling producers, jobbers or wholesale dealers in coal, their agents or their brokers, directly or indirectly, to refuse to deal with or to sell coal to any person, firm, corporation or association.

4. Threatening with loss of patronage or custom, any producer, jobber or wholesale dealer in coal, or his agent or broker, for selling or agreeing to sell to any person, firm, corporation or association, or from persuading any such producer, jobber or wholesale dealer in coal not to sell coal to any person, firm, corporation or association.

It is further ordered, That the respondents herein (other than respondent the J. B. Sanborn Co.) shall, within thirty days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have respectively complied with the order to cease and desist herein set forth.

Syllabus

IN THE MATTER OF
ARKANSAS WHOLESALE GROCERS' ASSOCIATION ET AL.

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

Docket 1232—May 15, 1926

SYLLABUS.

Where an association, which included in its membership two-thirds of the wholesale grocers doing business within its territory, and all the large concerns therein with one exception; and the officers and members thereof; in pursuance of a mutual understanding (1) to cause manufacturers and producers and their brokers or representatives to sell their merchandise in such territory exclusively to so-called "regular and legitimate" wholesale grocers, recognizing the channels of distribution flowing from manufacture or producer to wholesaler, to retailer, to consumer, as the only legitimate channels, (2) to prevent chain stores and other retailers from securing such merchandise at prices lower than those at which they could buy the same from "legitimate" wholesale grocers, and (3) to confine distribution of groceries and allied products to the "legitimate" channels of trade, and thereby suppress competition therein,

- (a) Emphasized the use of the aforesaid regular channels of distribution to the membership, through the association paper or bulletin sent to members, independent wholesale grocers, trade papers and retailers, as the most efficient method of marketing food products, and urged the members to live up to one of the principal objects of the association in promoting a better understanding and cooperation between manufacturers, wholesalers and retailers;
- (b) Secured from manufacturers and elsewhere information relative to their policy in the matter of distributing exclusively through wholesale grocers, and circulated among the membership the names of those who so distributed, and of those who did not so distribute;
- (c) Made a practice of urging the members to give all their patronage in so far as possible to those manufacturers who did so distribute and commended and caused such manufacturers to address them at their annual convention;
- (d) Condemned traders giving concessions to large chain store corporations, and commended to the members issues of a certain trade periodical, which listed, disparaged and denounced various manufacturing and producing concerns, which did not distribute their products exclusively through the wholesale grocer, and advocated the boycotting of such concerns;
- (e) Condemned the action of a broker who was represented as soliciting the business of, and dealing directly with, large retailers in various ways and urged the members not to deal with such a broker;