

## Syllabus

IN THE MATTER OF  
ARKANSAS WHOLESALE GROCERS' ASSOCIA-  
TION 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;

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- (f) Largely discontinued dealing with a brokerage firm which had begun to deal with chain stores directly, with the result that said firm was penalized to the extent of thousands of dollars annually;
- (g) Protested to manufacturers and producers selling in association territory against dealing directly with chain stores and retail organizations, and withdrew business therefrom;
- (h) Advised manufacturers and producers that certain concerns including some understood to be cooperative organizations or projects, were not legitimate wholesalers; i. e. did not "sell exclusively to retail trade," and were price cutters, with the result that such manufacturers and producers declined to sell the aforesaid concerns further;
- (i) Disseminated derogatory comment among the membership relative to said concerns and also relative to a soap manufacturer who had inaugurated a policy of going direct to the retail trade, and advocated a boycott of the products of the aforesaid manufacturer as being an illegitimate concern;
- (j) Urged a retail grocer's association with which they were affiliated as associate members, to discontinue, as far as possible, dealing in products of those manufacturers who sold the same to chain stores at a lower price than that at which they were offered to the independent grocer; and
- (k) Sought and secured cooperation from nonmember wholesalers through supplying them with copies of the association paper or bulletin, inviting them to participate in zone meetings of the members devoted to discussions of policies and measures, and soliciting contributions to association expenses;

With the intent of halting the course of chain stores in reducing the price of food products to the consuming public in the territory in question and with the effect of so doing to the extent to which the acts involved were successful, and with a tendency to close certain outlets in the territory concerned for the sale of goods by manufacturers and producers in other states, to regulate commerce by eliminating "irregular" dealers and their suppliers therefrom, and by restricting it to the so-called regular producers and dealers, and to lessen competition in the sale of groceries and allied products in the territory in question, and thus deny to dealers and consumers advantages in price and otherwise which they would obtain from the natural flow of commerce under conditions of free competition:

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

*Mr. Eugene W. Burr and Mr. John H. Bass* for the Commission.

*Watkins & Asbill*, of Atlanta, Ga., for Arkansas Wholesale Grocers' Association, its officers and members.

*Brundidge & Neelly*, of Searcy, Ark., for Searcy Wholesale Grocery Co.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged the respondent Arkansas Wholesale Grocers' Association, its officers, and its members, composed of individuals, partnerships, and corporations, with principal places of business in Arkansas, and engaged in

the sale at wholesale of groceries and allied products to retail dealers located in Arkansas and in neighboring States, and constituting in the aggregate about one-half the number of all the wholesale grocers in said State, with cooperating and confederating together and with others to confine distribution of products dealt in to the "regular" or "legitimate" channels of trade (i. e., from manufacturer or producer, to wholesaler, to retailer, to consumer<sup>1</sup>) and to suppress price competition, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as alleged, for more than three years preceding the complaint "united in a common course of action and have cooperated and confederated together and with others to confine the distribution of groceries and allied products to the aforesaid so-called regular and legitimate channels of trade; to prevent so-called irregular and illegitimate dealers from obtaining groceries and allied products from manufacturers and producers thereof, and thereby to suppress competition and especially competition in price therein, in the territory which they serve," and "to suppress price competition among themselves and with said so-called irregular and illegitimate dealers and others in the distribution and sale of the aforesaid products in the territory which they serve," in such connection advocating, encouraging, and supporting "the maintenance by manufacturers and producers of uniform prices established by said manufacturers and producers at which the commodities manufactured and produced by them shall be resold by wholesale and retail dealers."

Methods employed by respondents, as charged, in their efforts to confine distribution of groceries and allied products to the so-called legitimate channels included the following acts and practices:

The holding of meetings in order to interchange information, and discuss and adopt plans and measures relative to the carrying out of such undertaking;

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<sup>1</sup> According to the complaint, "respondents designate the channel of distribution commencing with the manufacturer or producer, flowing thence to the wholesaler, from the wholesaler to the retailer and from retailer to the consuming public, as the only regular and legitimate channel of distribution of the products in which they deal and which by them is denominated, the regular or legitimate channel of distribution. Channels of distribution originating with the manufacturer or producer and which do not flow through the wholesale dealer but go direct to the consumer or to the dealer doing both a wholesale and retail business or direct to retail dealers and especially to cooperative purchasing enterprises of retail dealers banded together to buy in wholesale or jobbing quantities, are by respondents designated as irregular and illegitimate channels of trade and aforesaid dealers acquiring goods through so-called illegitimate channels are by respondents designated irregular or illegitimate dealers."

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Keeping one another informed through bulletins and correspondence as to the identity of manufacturers and producers selling to irregular dealers, and bringing pressure to bear upon the former through boycott and threats thereof, persuasion and intimidation to refrain from further supplying such dealers;

Persecuting and harassing "so-called irregular dealers and especially aforementioned cooperative purchasing enterprises of retail dealers" through making and publishing disparaging statements concerning their business methods and financial responsibility and seeking to cut off their sources of supply, through bringing pressure to bear upon the manufacturers and producers as above set forth; and

Using other cooperative and individual means to make effective the undertaking herein involved.

Methods employed by respondents in their efforts to suppress price competition, in connection with the adoption and enforcement of price-maintenance policies, as above set forth, included the following acts and practices:

Keeping the membership informed through bulletins and correspondence as to the names of manufacturers and producers who endeavor to enforce a price-maintenance system and urging the members to confine their purchases as far as possible to such manufacturers and producers;

Bringing pressure to bear through threats or intimations of boycott, upon those manufacturers who do not establish and enforce a system of resale price maintenance, to change their policy in that respect;

Supplying the members through bulletins and other correspondence, with the names of manufacturers and producers who have not adopted or refuse to adopt a policy of resale price maintenance and urging the members to boycott and threaten with boycott such manufacturers and producers;

The taking of such action by the members; and

The use by respondents of other cooperative and individual means to make effective the undertaking concerned.

According to the complaint "the above-alleged acts and things done by respondents have tended, and still tend to, and did and do, close certain of the outlets within the State of Arkansas for the direct and immediate sale by manufacturers and producers in other States of goods shipped by them into said State. Said acts and things tend to, and do, regulate such commerce by eliminating therefrom all so-called irregular and illegitimate dealers and all manufacturers and producers who sell to such dealers, and by restricting said

commerce to such manufacturers and producers and to such dealers as will, and do, abide by, adhere to and aid the plan and limitation of trade hereinbefore described. Said acts and things substantially lessen, hinder and suppress competition in the sale and distribution of groceries and allied products in the territory served by respondents, obstruct the natural flow of commerce in the channels of interstate trade, and deny the dealers in and consumers of said commodities in the aforesaid territories, advantages in price and otherwise which they would obtain from the natural flow of commerce in said commodities under conditions of free and unobstructed competition, wherefore, said acts and things done by respondents are all to the prejudice of the public, of respondents' competitors and of manufacturers, producers and dealers not complying with and adhering to the aforesaid plan and limitation of trade, and constitute unfair methods of competition in commerce within the meaning and intent 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."

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, the Federal Trade Commission issued and served a complaint upon the respondents herein charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance by their respective attorneys, and having duly filed their answers admitting certain allegations of said complaint and denying others, hearing was held before John W. Addison, an examiner of the Commission theretofore duly appointed, and counsel to the Commission offered evidence in support of the said charges of the complaint, and said respondents offered evidence in their defense, which evidence was recorded, duly certified and transmitted to the Commission, and certain depositions were taken both at the instance of counsel for the Commission and counsel for the defense, and duly certified. Thereupon this proceeding came on for decision on the record, briefs and oral argument, and the Commission being fully advised in the premises, makes its findings as to the facts and its conclusions drawn therefrom.

## FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondent, Arkansas Wholesale Grocers Association, for more than five years prior to the taking of testimony herein was and still is a voluntary unincorporated association of individuals, partnerships, and corporations, having their principal places of business in the State of Arkansas, engaged in selling at wholesale groceries and allied products to retail dealers located at points in Arkansas and in neighboring States. The principal office of the association is at Little Rock, Ark., where its secretary resides. The aforesaid members of the association are about 45 in number, and in the aggregate constitute two-thirds of the total number of wholesale grocers in the State of Arkansas, comprising all but one of the large wholesale grocers located in the State. Respondents J. T. Jarrell, C. S. Lemons, D. C. Goff, and C. W. Linthicum are, respectively, the president, first vice president, second vice president and secretary of respondent association. Respondent members are the 45 wholesale grocers aforesaid and include Plunkett-Jarrell Grocer Co. and Scott-Mayer Commission Co., leading wholesale grocers of Little Rock. Cooper-Dickinson Grocer Co. at Little Rock was also a leading member of respondent association until this firm retired from business about the end of 1923.

**PAR. 2.** The Arkansas Grocer Co. was a member of respondent association when the complaint was filed and is still such. The Brown-Hinton Wholesale Grocery Co. and Silbernagel & Co. were members, but resigned, the latter on May 15, 1922, and the former some time after May, 1923, when the preliminary investigation in this case was made. J. Foster & Co. is a member but did not join until about the time the complaint in this case issued and Searcy Wholesale Grocery Co. has never been a member of respondent association. Said Silbernagel & Co. resigned because the "legitimate jobbers of this State" do not "get together and pledge themselves 100 per cent to only distribute merchandise for such manufacturers that sell only to members of this organization," refusing to adopt the suggestion of respondent secretary to throw out the lines sold to chain stores and by them sold at cut prices. Said respondents Searcy Wholesale Grocery at Searcy, Arkansas Grocer Co. at Blytheville, Brown-Hinton Wholesale Grocery Co. and J. Foster & Co. at Fort Smith, and Silbernagel & Co. at Pine Bluff are not shown to have participated in the acts complained of, aside from membership in respondent association, to the extent in this paragraph described, sufficiently to justify findings against them.

PAR. 3. The member respondents purchase the major part of the products in which they deal, both directly and through brokers, from manufacturers and producers of such products located in various States of the United States other than the State of Arkansas and cause such purchased products to be transported from the various States, in which the same are manufactured or produced, to the several warehouses and places of business of the respondent members in the State of Arkansas. The goods so transported are sold and delivered by the respondent members from their respective places of business in the State of Arkansas to their dealer vendees at the respective points of location of said vendees in the State of Arkansas and at times to dealer vendees located in neighboring States, including Missouri, Texas, and Oklahoma. In the course and conduct of their respective businesses respondent members are engaged in competition with each other and with other wholesale grocer concerns and with various manufacturers and producers for the trade of retail grocers within the territory above described served by said respondent members. Manufacturers, both those acting through brokers and those not so acting, ship groceries and allied products to customers in Arkansas, including respondent members and other wholesale grocers and chain stores, and are in competition among themselves for this trade.

PAR. 4. The respondent association and members designate channels of distribution originating with the manufacturer or producer and which flow thence to the wholesaler, from the wholesaler to the retailer and from the retailer to the consuming public as the only regular and legitimate channels of distribution of the products in which they deal and which by them are denominated regular and legitimate channels of distribution. They designate channels of distribution originating with the manufacturer or producer and which do not flow through the wholesale dealer but go direct to the consumer, or direct to retail dealers, and especially chain-store enterprises buying in wholesale or jobbing quantities, as irregular and illegitimate channels of trade and traders acquiring or selling goods through so-called irregular and illegitimate channels are by respondents designated irregular or illegitimate dealers.

PAR. 5. Respondent association, officers, and members prior to three years ago reached a mutual understanding to cause manufacturers and producers distributing groceries and allied products in Arkansas to sell their merchandise, and to cause the brokers representing them to sell their merchandise, exclusively to so-called "regular and legitimate" wholesale grocers; to prevent chain stores and other retailers from securing such merchandise at prices less than

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those at which such chain stores and other retailers could buy the same from so-called "regular and legitimate" wholesale grocers; and to confine the distribution of groceries and allied products to the "regular and legitimate" channels of trade, and thereby to suppress competition and especially competition in price in groceries and allied products brought from other States into Arkansas.

In pursuance thereof for more than three years last past the respondent association and respondent officers and members have pursued a common course of action and done the acts described below, partly through their common organization the respondent association and partly through individual action cooperating with the association, to wit:

(a) The secretary of the association, respondent C. W. Linthicum, prepares, as occasion offers, mimeographic "bulletins" and "news letters," sending them to members of the association and to independent wholesale grocers in Arkansas, to trade papers, and retail grocers.

(b) The secretary in a bulletin dated December 9, 1921, set out one of the principal objects of the association as follows: "To bring about a better feeling, a better working understanding, a better co-operation with the manufacturers, the wholesale grocers and the retail grocers of food products." He continued, "We contend that the most economical and most efficient way to market food products is through the three channels we have mentioned and if we believe that, then is it not one of the most important objects that as an association, we can have, to bring those together in a more harmonious way, who form the three links in that chain. Do you as an individual grocer, live up to those objects, and are you assisting your association to better the conditions that we hope to make better \* \* \*."

(c) The secretary and members at various times during the period from July, 1920, to April, 1924, wrote to manufacturers to ascertain their policy as to selling their products through the wholesale grocers or selling direct to retailers; and published in its bulletins the information received in this manner as well as information from other sources as to manufacturers' selling policies. The secretary bulletined the names of manufacturers giving information that they patronized wholesale grocers exclusively. He commended in his bulletins such manufacturers; and, on August 16, 1921, advised "We are just bold enough to say that a wholesale grocer should give his business to the manufacturers who sell to the wholesaler *only*." (The italic is that of the bulletin.) Talks were made at the 1924 annual meeting of the association by manufacturers who declared that they sold exclusively through wholesale grocers; and favorable manufacturers were commended to the membership by bulletin of

the secretary. The secretary published the name and reply of manufacturers who admitted selling to chain stores or other retailers.

(d) The secretary in his bulletins urged buying as far as possible from those manufacturers who sell to the wholesale trade exclusively, and condemned traders giving concessions to large chain store corporations. A bulletin of January 9, 1922, contains the following:

We hope that all wholesale grocers will look over their list of manufacturers from whom they buy and see the ones that are selling the chain stores at the same price that they are selling the wholesale grocers. When you buy from them, you give them the club that they are pounding you with and the club that they pound the retailers with.

Again, he says, on December 29, 1921, in commending certain manufacturers who have declared that they sell wholesale grocers only:

We take the firm stand that if the wholesale grocers expect the manufacturers to be 100 per cent loyal to them they must expect to be 100 per cent loyal to the manufacturers.

A New Year's resolution propounded in bulletin dated December 27, 1921, reads:

Resolved, that as far as possible, we will give our orders for merchandise to those manufacturers who sell to the wholesale trade *exclusively*. (The *italic* is that of the bulletin.)

Again, on December 30, 1921, the respondent association advises members to start the new year with the determination that they "will stand by the manufacturer who is standing by them." The secretary continues:

You are standing by the retail merchant who buys from *you*. You do not sell him merchandise and then go out to the large consumer and sell them at the same price. In fact you do not sell the consumer at all. Then why is not the same principle involved when you purchase your merchandise. If you believe that the three links in the chain of merchandise are the necessary ones, then you know that you should stand by the manufacturer of food products who stands by you \* \* \* Let's get closer to our competitor, and cooperate with him, and when the books are closed for 1922, all will have done better than they did in 1921.

Again, under the caption,

STAND BY THE MANUFACTURER THAT IS WORKING EXCLUSIVELY  
WITH THE WHOLESALE

the association on January 3, 1922, says:

We have had quite a little to say along this line \* \* \* We believe that the time is upon us to work 100 per cent with the manufacturer who works 100 per cent with the wholesale grocer. Do you think so?

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The official bulletins of respondent association during the period from May, 1923, to January, 1924, were not available for evidence, having been destroyed. In April, 1924, the association says in a bulletin:

How can you expect the manufacturer to stick to you if you don't stick to him. It is a case of "You scratch my back and I'll scratch yours."

Be loyal to those who are loyal to you. You can reduce to a minimum the articles carried for those manufacturers who are giving the "double cross" to the wholesale grocers. You know who those manufacturers are. We don't have to make a list of them.

Just go through your stock, make a list for your own information, then see if you can't cut those lines out that are featured by the manufacturer who is not dealing on the level with the wholesale grocers. We don't mean just you. Be loyal to your own friends, the wholesale grocers, and if that particular manufacturer or manufacturers are not loyal to the fraternity, then do your part to show them that they are not playing the game fair. It is up to you.

On April 30, 1924, the office of the association sent out copies of a trade letter of the California Wholesale Grocers Association in which reference is made to "deadhead" articles not contributing to profits, and continued:

Many of these articles are **NATIONALLY ADVERTISED STAPLES** whose manufacturers patronize every possible channel of distribution and who care not a fig if their distributors suffer injustice and the loss of an earned and deserved compensation.

Now is the time *and now the opportunity to clean all such articles out of stock and now is the time to favor the goods which "pay their fare" and to favor those manufacturers who favor you \* \* \** The trade is united, it is on the defensive, courageous action is the need of the hour!

To temporize means eventual surrender! (The italics and capitals are those of the bulletin.)

(e) The trade journal "Duncan's Trade Register" on the cover of the issue of November, 1921, announced a purpose to publish a list of "undesirables" and said in the course of the notice:

What the retailer needs is a list of concerns placing chain stores on the jobbers' list \* \* \* Compel them to distribute through the chain stores.

The cover gave as a sample of the list later to be published, the following concerns: "Aunt Jemima Mills, Armour Grain Co., Joseph Campbell Co., Hires Root Beer, Procter & Gamble; Libby, McNeil & Libby; National Biscuit Co., Cream of Wheat."

On November 3, 1921, a bulletin by Secretary Linthicum said:

## THE LIST OF UNDESIRABLES

The above is the title of an article on the front page of **DUNCAN'S TRADE REGISTER**, November, 1921. If you do not take this splendid magazine, it will pay you to subscribe. In his January edition he will give you a complete

list of "UNDESIRABLES"! That is what he terms the manufacturers who are selling the Chain Stores at the prices they sell the wholesaler. In this article he gives a few of them. He says that the list given is just a sample, and that the complete list will be ready for distribution, January 1. The price is \$3, including yearly subscription to "DUNCAN'S TRADE REGISTER." Don't you think the list worth the money, and then you get this fine magazine for a year. Address, Portland, Oreg. (The capitals are those of the bulletin.)

"Duncan's Trade Register" of January, 1922, postpones the publication of the forthcoming "list of undesirables" describing the producers to be listed as "fellows" who are "minus both policy and principle" and who will take an order "from jobber, retailer, restaurant, logging camp, boarding house." In the February issue the promised article appeared in "Duncan's Trade Register" under this heading:

#### LIST OF UNDESIRABLES AND MALEFACTORS OF GREAT WEALTH

Under this heading appeared a list of named corporations of which the magazine advised:

Boycott them? Why certainly. Trade Register makes no reservation in advising the boycott and ostracism. They are criminals without the law, a menace to commerce, society and the peace of the world. Boycott them by all means, fair or foul \* \* \* Don't buy their goods, use their goods, or miss a chance to advise your friends to give like treatment.

Certain of the corporations on the list are especially set out, "signifying that they double-cross dealers and consumers alike; they have neither policy nor principle." Secretary Linthicum says of this article and of "Duncan's Trade Register" in bulletin of February 8, 1922, as follows:

#### DUNCAN'S TRADE REGISTER FOR FEBRUARY

Have you received your copy. Well ours has arrived. It is a real "hot one." Mr. Duncan is one of those fearless writers who call an ace an ace and a spade a spade. His defense of the Wholesale Grocer in his article entitled "JOBBER'S MUST STAND TRIAL," is one of the best things that we have ever read, and if there was nothing else in this issue it should appeal to you to subscribe. But there are many other articles that merit your attention. Then the list of the concerns over this country who are not dealing as they should, are in this issue. The price is \$2 per year. Send your subscription and ask that a copy of the February number be sent you. Address DUNCAN'S TRADE REGISTER, Portland, Oreg. (The capitals are as appear in the bulletin.)

(f) Henry Leigh & Co. is a brokerage firm established in Little Rock about 1903. This house sells the goods of numerous manufacturers and producers of groceries and allied products, having ex-

clusive brokerage privileges for the Arkansas and southeastern Missouri territory from practically all lines it handles. Part of the products sold through this firm is shipped to Henry Leigh & Co. and put into the firm's warehouse, and part goes direct to the purchasing wholesale grocer house. This firm, prior to about April, 1921, had among its customers the firm of Plunkett-Jarrell Grocery Co. of Little Rock. The latter company are wholesalers buying groceries aggregating millions of dollars yearly and are also extensive manufacturers. They purchased from Henry Leigh & Co. hundreds of cars of groceries and allied products per year including practically all of its lines which the Plunkett-Jarrell company carried, such sales running as high as 50 cars of sugar at a time. At the same time they were selling general lines also to the firm of Scott Mayer Commission Co., wholesale grocers of Little Rock, and to Cooper-Dickinson Grocer Co., of Little Rock, selling them as much as \$75,000 worth of Snowdrift lard within 30 days. These houses were large and leading wholesale grocers of Arkansas located at Little Rock, and Henry Leigh & Co. was selling each of them 40 or 50 lines of goods. Upon the removal to Little Rock of a wholesale concern known as the Powell Grocery Co., in 1921, Henry Leigh & Co. began to sell the Powell company. Upon moving to Little Rock the latter company became the main source of supply for, and was reputed to be financially connected with, a chain store concern known as the Cox Stores Co., Inc. The Cox company has about 50 stores, chiefly at Little Rock. Early in 1923 Henry Leigh & Co. began selling the Cox stores direct, Cox having opened a warehouse at Little Rock immediately before. About a year later, Henry Leigh & Co. began to sell the eight stores of the branch of the Piggly Wiggly organizations operating in Little Rock, having previously sold to them in Memphis.

Upon the acceptance by Henry Leigh & Co. of Powell Grocery Co. as a customer, Plunkett-Jarrell Grocer Co. changed its policy and greatly reduced its purchasing from Henry Leigh & Co. This concern buys from Henry Leigh & Co. only Borden's milk, tapioca, mushrooms and in March, 1924, 2,400 pounds of Birdseye beans. Part of Borden's milk line is an absolute essential to a wholesale grocer and carried for this territory exclusively by Henry Leigh & Co. The Scott Mayer Commission Co., following the action by Henry Leigh & Co. described above, likewise dropped off its trade so that they also came to buy only Borden's milk and tapioca. The Cooper Dickinson Co. removed their trade from Henry Leigh at the same time and other Little Rock jobbers engaged in wholesaling produce and not belonging to the respondent association, to whom Henry Leigh & Co. had previously sold in large amounts similarly left off

trading with that brokerage house. Henry Leigh received reports from salesmen in the regular course of their duties that the reason these wholesalers declined to buy as in former times, as described above, was that Henry Leigh & Co. sold to the Cox and Piggly Wiggly cash stores. The reason that the above-named Little Rock jobbers buy from Henry Leigh only the commodities described above is taken as a matter of course by the representative of the brokerage house, who calls upon these companies in all his present transactions for Henry Leigh & Co., with them, to be the fact that his house is engaged in selling chain stores direct.

(g) The boycotting of Henry Leigh was not entirely successful. He did not abandon selling to the chain stores, and remained in business. It was not a complete boycott but it was followed by an annual loss to his concern which he estimates at \$10,000 or about 50 per cent of its gross commissions on business in Little Rock. The aforesaid reduction of buying from Henry Leigh & Co. on the part of Plunkett-Jarrell Grocer Co., Scott Mayer Commission Co., Cooper Dickinson Grocer Co. and others not parties respondent herein, was adopted and continued as a common course of action by the wholesale grocery houses named because Henry Leigh & Co. began and continued to sell direct to the Powell Grocery Co., the Cox Stores Co., Inc., and the Piggly Wiggly stores. This course of action was in harmony with the aims of the respondent association and was supported by the association. At a State meeting of the respondent association in private conversations among members in the lobby during the sessions, the secretary and one member of respondent association advocated the policy that jobber members should not buy from brokers that sell chain stores, and in relation to this policy Henry Leigh & Co. were named.

J. T. Jarrell, now president of respondent association and vice-president of Plunkett-Jarrell Grocer Co., and possibly other Arkansas jobbers, in April, 1922, called upon an official of the Godchaux Sugars, Inc., New Orleans producing interests, for which Henry Leigh & Co. have for many years been acting, and informed them that they could expect little or no business in Arkansas as long as they continued selling the chain stores such as Cox, and that he himself could not do business with Godchaux Sugars, Inc., because they sold retailers such as the Cox stores. The firm of Plunkett-Jarrell gave the Godchaux company orders for sugar, but placed at least some of them through brokers other than Henry Leigh & Co. and for this Godchaux made explanation to Leigh who had the exclusive right to represent Godchaux interests in the territory involved, that a large decrease in Godchaux business in Little Rock was directly

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attributed to Leigh's selling chain stores. Said Jarrell does not do the buying for his company and its actual buyers testify that the fact that Leigh sold to chain stores did not influence them against buying from him. Cooper-Dickinson Grocery Co. in correspondence with the Southern Cotton Oil Trading Co. of New Orleans, producers of Snowdrift lard, in October, 1921, protested against the latter company permitting their brokers Henry Leigh & Co., to sell cars of lard direct to retailers instead of through wholesale grocers, and further to Leigh's shipping them through a produce jobber. He said in part:

Our enthusiasm for your line you can well imagine has received a cold shower bath on account of this sort of unfair treatment. We have instructed our buyers to give Henry Leigh & Co. no business until they discontinue this sort of unfair practice. These same retailers and feed dealers are buying sugar, 25 and 50 bag lots, from Henry Leigh, out of his warehouse, and you can imagine how this sort of unfair business is cutting into Henry Leigh's prestige with local jobbers.

We have had this up with your office a number of times and we have never accomplished anything, and suppose possibly nothing will come of this complaint, but we just wanted you to know how we felt about the matter. We say to you frankly, if Henry Leigh didn't sell Snowdrift lard and Borden's milk we would not buy a thing from him. We can also say to you frankly that local jobbers feel just about the same way we do about the matter.

Last Saturday's bulletin was the first one issued in years we didn't have your line mentioned in. We just simply can not pump up our enthusiasm against this sort of unfair treatment.

Cooper-Dickinson wrote the American Sugar Refining Co., New Orleans, on August 29, 1922:

Price cutters in our town have about gotten most of our sugar business. Godchaux's broker, Henry Leigh & Co., insists on selling sugar to retail feed houses, who use it as an advertising medium, which accounts for our losing the sugar business. We are selling sugar at \$7.50 just to meet this unfair local feed house competition. Local jobbers haven't bought anything from Henry Leigh & Co. on this account for a long time and will certainly not be guilty of giving them any business in the future.

And on January 6, 1923, he wrote the same company as follows:

Broker in the office yesterday made statement you were selling Piggly Wiggly stores in our town direct. We of course don't believe it, at the same time we would like to have an expression from you for our own information. Of course Piggly Wiggly Little Rock are simply retailers and are not entitled to buy as jobbers from anybody. You will be interested to know that they are making no headway in our town, if Retail Grocers will get on their toes and clean up their stores they can put them out of business.

Respondent association on July 12, 1922, without giving the name of any broker, published the following in a bulletin:

Do you buy from the broker who gives you the "double cross." Do you buy from the broker who solicits the large retail dealers DIRECT. Do you buy from the broker who uses a wholesale dealer in other lines, but who does not regularly stock the items sold, as a camouflage drop shipment dealer.

Do you think it fair to the Wholesale Grocers who carry in stock sugar, lard, etc., in large lots, to have the broker sell that commodity to large retailers through a Dairy Company, giving them a CASH DISCOUNT to handle the order, just to rob you of your legitimate profit.

Do you think it fair to the Wholesale Grocer for the broker to sell a car of lard, or a car of sugar, through a Produce Dealer, who does not ordinarily handle such items, and who will accept the car order on a CASH DISCOUNT basis, in order to cheat you out of your regular profit \* \* \*

Henry Leigh & Co. were openly soliciting the retail trade direct and were selling sugar to the Terry Dairy Co. at manufacturers' rates, at least as low as those given wholesalers; and sold sugar and lard to produce houses. Leigh testifies that respondent secretary had called on him and asked if he sold the Cox and Piggly Wiggly chain stores, but this is denied by the secretary. The last above circular was intended to be understood to relate to Henry Leigh & Co. The secretary refers in bulletin of April 28, 1923, to a broker "who will call on the large retail grocers or chain store buyers, sell them car lots, giving them the wholesale price, with the understanding that the order to be filled by some wholesale grocer who will handle the car order (or less than car) on a 2 per cent margin"; and declares that,

No wholesale grocer should buy from a broker who does such tricks as that. Certain brokers have done this kind of underhand business, and we hope to see it stopped by those who have been affected by such practice.

Cooperation between a broker and a number of his customers in the sale and purchase of merchandise by means of a pool car in a line of goods in which individual purchasers can not well handle each an entire car is a great advantage to both broker and the customers. Prominent respondents have refused to buy into the pool cars through Henry Leigh & Co. if Cox and Piggly Wiggly chain stores are to participate. The Cox Cash Stores, Inc., failed in attempts to share in pool cars containing Del Monte brand of goods and Argo salmon, where a broker other than Henry Leigh was handling the car, because the Little Rock jobbers would not participate if Cox was to be included. While Cox Cash Stores Co., Inc., buy through Henry Leigh & Co. openly, their relations with other brokers are confidential and Cox declined to give their names.

(h) The Burrows Wholesale Grocery Co. conducted a business at Pocahontas, Ark., from 1922 to 1923, and was engaged in bringing goods from out of Arkansas into the State, being in competi-

tion with respondent members. Respondent A. B. Jones & Co. wrote letters informing persons contemplating selling the Burrows Co. merchandise that the latter were not legitimate wholesalers, meaning that they did not sell "exclusively to retail trade." The information upon which A. B. Jones took this action was erroneous. One of the concerns thus written to expressly refused to sell the Burrows Co., declining to sell even on the basis of cash in advance. The Burrows Co. was unable to buy from Memphis brokers on the ground that they were retailers, and neighboring jobbers would not join the Burrows Co. in pool cars.

(i) Among so-called illegitimate dealers were the various corporations operating in Arkansas and neighboring States under the name of Creasey Companies and reputed auxiliaries, known as the Brite-Mawnin Wholesale Grocery Co. of Kansas City and the Interstate Grocery Co. of Cairo, Ill. These companies were understood to be claiming to effect a cooperative plan of handling the wholesale part of distribution upon a margin of 3 per cent. They imported groceries and allied products in interstate commerce into the respective States of the location of their branches, one being engaged in competition with respondent members at Fort Smith, Ark. Respondent members, particularly those located at Fort Smith, complained to manufacturers against these concerns on the ground that they were not legitimate jobbers, and that they were price cutters. Several manufacturers decided that they could not afford to sell these corporations further and informed the objecting wholesale grocers that they would not sell them further.

(j) The Creasey and auxiliary corporations were given derogatory publicity in bulletins issued by the association. A representative of one manufacturer in January, 1921, called to see the president of the respondent association because his company was "in bad" with the respondent association for having sold a Creasey corporation. At this time the Creasey corporations operating in the Arkansas territory were paying their debts and had excellent credit standing. They later became financially involved and are not now operating in the Arkansas territory. The issue of the Duncan's Trade Register of February, 1922, indorsed by the association as above described, placed the Creasey corporation in its most derogatory category of the "Judas Iscariot Society."

(k) Among so-called illegitimate manufacturers are the Procter & Gamble Co. of Cincinnati, a concern engaged in shipping soap into Arkansas in competition with other manufacturers. This company at some time prior to November, 1920, began the experiment of going direct to the retail trade. Later, respondent secretary rep-

resented that they attempted to give certain wholesale grocery concerns an exclusive privilege of jobbing their trade in certain local territories. The association issued bulletins in favor of wholesale grocers refusing to sell the Procter & Gamble lines and sent out matter derogatory to Procter & Gamble and indorsed as above described, the propaganda of Duncan's Trade Register wherein Procter & Gamble, among others, were placed in the list especially to be boycotted.

(l) There has been formed, with headquarters at Little Rock, a retail grocers association which has an active membership of 233 retail grocers. Numerous manufacturers' salesmen are associate members and 15 wholesale grocers of Little Rock, Fort Smith, and Memphis are paying associate members. This association comprises 75 per cent of the retail stores, not affiliated with chain-store organizations in Little Rock. Meetings are held weekly and are attended very largely. Wholesale-grocer members have attended these meetings from the beginning, all of them having been present at times. There are certain manufacturers whose products can be bought by chain stores cheaper than by independent retailers. There are other manufacturers whose products can not be bought by chain stores cheaper than by independent retailers. The wholesale members, including the principal Little Rock wholesale houses, respondents here advocate, at meetings of the retail grocers' association that the members of that association patronize manufacturers who sell to chain stores and independent grocers at the same price uniformly, for the purpose of restricting, and so far as possible eliminating, the importation by themselves into Arkansas of the products of such manufacturers as sell to chain stores at a lesser price. On such occasions the name of the individual manufacturer, including the producer of Campbell's soups, who sells cheaper to chain stores than to independent grocers has been mentioned, and the wholesale members tell the retailers that they can not see why the retailers sell Campbell's soups when they "can sell other soups that are just as good and whose manufacturers give us a fair deal." The retailer members of the retail association are not able to discontinue selling these products entirely, but do so as much as they can. At the annual meeting of the respondent association Secretary Linthicum and at least one other member advocated, without opposition, having the retailers cut out those lines which were sold to chain stores.

PAR. 6. The acts above described were intended to, and to the extent that they were successful did, avail to halt the course of the chain stores in Arkansas in their reduction of the price of food prod-

ucts to the consuming public. In bulletin of May, 1922, the association quoted:

What is the most important problem the wholesale grocer has before him to-day? Who is it that is threatening the independent retailer? It is the chain-store system.

What has caused the chain store to cut prices on popular brands of food products with known prices? In a nutshell, it is the manufacturer with his "special concessions" or "preferential discount" selling these large chain-store corporations.

\* \* \* \* \*

The wholesale grocer is in the same boat and the manufacturer is rocking the boat of them.

PAR. 7. The respondent association has retained its present secretary, respondent C. W. Linthicum, since 1920 as its principal executive, and only paid officer, and at its annual meeting of 1924, passed a resolution expressly indorsing the "workings of this association" and declaring that the members pledged themselves "to cooperate with our officials in their efforts to better trade conditions for our business and that we use every effort to support the organization by securing 100 per cent membership in this State." The respondent members of the association have continued to support the organization by payment of dues and to delegate authority to their secretary and other officers under circumstances such that they know or ought to have known, through bulletins and meetings of the association or groups of members thereof, and otherwise, the manner in which and the means by which the objects of the association were being carried into effect, including the methods and means set forth in the foregoing findings. There was an effort made to secure the cooperation of nonmembers in the activities of the association. Non-member wholesale grocers get copies of bulletins. They are invited to zone meetings. They are asked to contribute to the association expenses, and some do. A strong effort has been made to bring nonmember wholesale grocers into the association. In addition to the annual meetings of respondent association there were also frequent so-called "zone" meetings attended by the secretary and frequently other officers, at which the policies of the association were discussed and means taken for carrying them into effect. The Little Rock wholesale grocers met weekly.

PAR. 8. The acts and things aforesaid, done by respondent association and respondent officers and members pursuant to the said mutual understanding, tend to close certain outlets in the State of Arkansas for the sale, by manufacturers and producers in other States, of goods shipped by them into said State, to regulate commerce by eliminating "irregular" dealers and their suppliers from

it and by restricting it to such producers and dealers as abide by the plan of trade described above and to lessen competition in the sale of groceries and allied products in the territory served by respondents and thus to deny dealers and consumers advantages in price and otherwise which they would obtain from the natural flow of commerce under conditions of free competition. Such common course of action, combination and conspiracy was adopted and pursued for the purpose and with the effect of substantially lessening, hindering, burdening and regulating the course of interstate commerce in groceries and allied products between other States and the State of Arkansas.

PAR. 9. The respondent association issued bulletins favoring resale price maintenance by manufacturers of groceries and allied products, and suggesting that members ask manufacturers shipping said products into Arkansas to insist that jobbers buying their products maintain the resale prices thereof. The association also issued bulletins and held zone meetings advocating the maintenance, by wholesale grocers in Arkansas, or in various individual localities within that State, of uniform wholesale grocers' prices of such products. An attempt, successful for a period of 60 days only, in one locality, and other unsuccessful attempts on the part of certain groups of respondent members were made to maintain uniform jobbers' prices within such individual groups. The propaganda and the price fixing efforts in this paragraph above referred to constituted efforts of occasional and temporary character and did not substantially lessen, hinder, restrict, burden or regulate interstate commerce in groceries and allied products brought into Arkansas from other States, nor evince a direct or dangerous tendency so to do.

#### CONCLUSION

The practices of the respondents as set forth in the paragraphs numbered 3 to 8, inclusive, of the foregoing findings as to the facts, in the circumstances therein set forth, are to the injury and prejudice of the public and respondents' competitors and manufacturers, producers and their representatives, and constitute unfair methods of competition in interstate commerce in violation of 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."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the re-

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spondents, oral testimony, depositions and documentary exhibits, the trial examiner's report upon the facts, the exceptions of counsel for the respondents thereto, and upon briefs and oral argument submitted by respective counsel, and the Commission having made its findings as to the facts, and an order of dismissal of certain respondents as independent parties, and having reached its conclusion that the remaining respondents have violated the provisions of section 5 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,"

*Now therefore it is ordered,* That the respondent association, its officers, both individually and in their said official capacity, and its individual members, their agents, representatives and employees or any group of such respondents or their agents, either with or without the cooperation of persons not parties hereto, cease and desist from following a common course of action pursuant to mutual understanding, combination, agreement or conspiracy, for the purpose or with the effect, directly or indirectly, of lessening competition in the course of trade in groceries or allied products, or any of them, entering the State of Arkansas from other States, by the following methods, or any one or more thereof, to wit:

(1) By ceasing to deal, or to deal less extensively than otherwise, with one or more manufacturers, producers, brokers, or other agents representing any manufacturer or producer, on the ground or for the reason that such manufacturers, producers, brokers, or agents sell their goods direct to chain stores, so-called cooperatives or retailers in the grocery trade, at prices lower than those at which retailers can purchase said goods in the same territory from wholesale grocers in the ordinary course of trade;

(2) By advocating the said common course of action outlined in paragraph (1) foregoing, in bulletins, news letters or correspondence or at meetings;

(3) By threats, oral or in writing, express or implied, directed to any manufacturer, producer, broker or manufacturers' agent for the purpose or with the effect of inducing, persuading or constraining such manufacturer, producer, broker, or agent to cease to sell, or diminish his sales to chain stores, so-called cooperatives or retailers, at prices lower than those at which retailers can purchase said goods in the same territory from wholesale grocers in the ordinary course of business;

(4) By urging a common course of action by manufacturers, respondents, independent wholesale grocers and retailers to defeat the sales policy of manufacturers selling indiscriminately to jobbers

and retailers as an encouragement to trading exclusively through jobbers, and as a discouragement to trading with manufacturers who do not distribute exclusively through jobbers;

(5) By cooperatively soliciting assurances from manufacturers that they will remain loyal to the association's contention that it is improper and illegitimate for manufacturers to sell both jobbers and retailers, and by giving assurances on the part of the association to such manufacturers of special selling effort in return for or on account of said loyalty;

(6) By circulating among the members, nonmembers, wholesale grocers and retailers, statements from members advocating the practice of selling exclusively or chiefly through wholesale grocers, or circulating, as aforesaid, communications from other sources urging united action in favor of following the channels of trade from the manufacturer to the wholesaler, thence to the retailer and thence to the consumer, to the exclusion of any other channel of distribution in the grocery trade;

(7) By recommending or procuring the circulation of scurrilous or defamatory attacks on manufacturers or producers or their representatives who sell direct to chain stores, cooperatives or retailers;

(8) By obtaining the cooperation of the Little Rock or any other retail grocers' organization or its members to the end that retail grocers cease to sell to the public, either wholly or in so far as practicable, the merchandise of manufacturers, producers or their brokers who sell direct to chain stores, so-called cooperatives or other retailers at prices described in paragraph (1) of this order; or by concertedly advocating in bulletins, news letters or correspondence or at meetings that the retailers carry out the said common course of action, with the purpose or effect of destroying or lessening the movement of the grocery products affected into Arkansas, through respondents to retail customers.

*It is further ordered,* That the respondent, Arkansas Wholesale Grocers' Association, shall file with the Federal Trade Commission, within 60 days from date of this order, its report in writing stating the manner and form in which this order has been conformed to.

#### ORDER OF DISMISSAL OF CERTAIN RESPONDENTS AS INDEPENDENT PARTIES

This proceeding having come on for final hearing before the Federal Trade Commission and, simultaneously therewith, for hearing upon the motion of counsel for the Commission for an order of dismissal of certain parties respondent, unaffiliated with respondent association, absolutely, and other parties respondent to the extent

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that they have not been so affiliated, and it appearing from the record, from the trial examiner's report on the facts and from the motion of counsel for the Commission that such action of dismissal is proper and just, and the Commission being fully advised in the premises,

*It is hereby ordered,* That respondents Searcy Wholesale Grocer Co. of Searcy, Ark., Brown-Hinton Wholesale Grocery Co. of Fort Smith, Ark., and Silbernagel & Co. of Pine Bluff, Ark., be dismissed as parties respondent herein;

*And it is further ordered,* That respondents Arkansas Wholesale Grocery Co. of Blytheville, Ark., an J. Foster & Co. of Fort Smith, Ark., be dismissed, as independent respondents not affiliated with the respondent association, and that they remain parties respondent as members of the respondent Arkansas Wholesale Grocers' Association.

## Complaint

IN THE MATTER OF  
LAUER & SUTER COMPANY

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

*Docket 1370—June 1, 1926*

## SYLLABUS.

Where a corporation engaged in the manufacture of candy, and in the sale thereof to wholesale dealers and jobbers, advertised and sold certain assortments, which were composed of (1) a display card for the use of the retailer, (2) a large number of chocolate eggs of uniform size and shape to retail at one cent each, and (3) a few chocolate Easter eggs of larger sizes designated as 3 cent, 5 cent, and 10 cent, eggs, and were designated to be sold, and sold at retail under a merchandising plan, by which the chance selection and purchase by the ultimate consumer of one of a few pink, lemon, or white, center pieces therein contained entitled him without further charge to a 3 cent, 5 cent, or 10 cent, egg, respectively, by which the purchase of the last piece similarly entitled him to a 10 cent egg, and by which the attention of the prospective purchaser was invited to the chances thus offered him by a legend setting forth the information upon the display cards above referred to; with the result that the chance of winning one of the prizes thus offered induced the purchasing public to buy the candy in question, to the prejudice of competitors who did not place in the hands of dealers candy or other merchandise to be delivered to consumer purchasers, in addition to the candy sold them and without further charge, in accordance with a scheme or device of lot or chance:  
*Held*, That such a practice, under the circumstances set forth, constituted an unfair method of competition.

*Mr. William A. Sweet* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Maryland corporation engaged in the manufacture of candies and sale thereof to wholesale dealers, with principal office and place of business in Baltimore, with using a lottery scheme in merchandising its product, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, in the following acts and practices: