

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS NOVEMBER 5, 1926, TO JANUARY 29, 1928

IN THE MATTER OF NORTHWESTERN TRAFFIC & SERVICE BUREAU, IN- CORPORATED, ITS OFFICERS, DIRECTORS AND SUB- SCRIBERS, ET AL.

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

Docket 1145. Complaint, Mar. 28, 1924—Decision, Nov. 5, 1926

Where a nonprofit corporation which had for its object the purpose, among others, of confining the distribution of coal in the states served by retail dealers associated with it, to channels considered by it as regular under definitions and standards set up by it, and of preventing its distribution, through channels similarly considered irregular; and the members and directors thereof; in pursuance of the aforesaid object and purpose and in cooperation with its retail dealer "subscribers",

- (a) Solicited and received from its said subscribers and other sources information as to so-called "regular" and "irregular" dealers, consumers entitled to purchase direct from producers or wholesalers, irregular shipments (secured in some cases from railroad employees and records in violation of law), etc., and disseminated the aforesaid information among subscribers, "regular" dealers, shippers, and their associations, in the form of directories and otherwise;
- (b) Asked those suspected of having sold or shipped coal through irregular channels for definite information in the matter on the pretext of securing the same for a particular subscriber, and sought to dissuade those suspected of or ascertained as making such shipments, from so doing and threatened them with the loss of the patronage of its subscribers and of "regular" dealers in the territory served by it in the event of their failure to do so, advising them, further, that they would be held responsible for the policy or mistakes of vendee wholesalers who resold coal to "irregular" dealers;
- (c) Frequently sent shippers lists of "the only equipped retail coal dealers" in towns where "irregular" dealers or "snowbirds" were located and disparaged and misrepresented to them the status, equipment, and business methods of dealers considered irregular by it;
- (d) Advised subscribers of the results of its efforts to trace "irregular" shipments and of its dealings with those responsible therefor, as above set forth, and circulated false and misleading propaganda among subscribers troubled with "irregular" competition, to the effect that the coal handled through such "irregular" channels was uniformly of poor quality and such as could not be sold by regular dealers with satisfaction to their customers;

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- (e) Intimidated and attempted to intimidate persons from acting as agents of concerns which sold direct to consumers, through representing that the Government was about to prosecute their principals for misrepresentation and misbranding;
- (f) Cooperated in the matter with a similar trade organization operating in a different territory and exchanged information with it relative to the object and purpose above set forth, and entered into understandings with shippers' associations directed to the prevention of the sale of coal by members thereof through "irregular" channels; and
- (g) Supplied and caused to be published in a trade periodical, the subscribers to which were largely made up of retail dealers in the territory concerned, false and damaging reports relative to the quality of coal, equipment, and business methods of persons who handled coal through so-called "irregular" channels, and information as to shippers who declined to confine their shipments to the desired channels;

With the result that "regular" dealers operating in the territory in question withdrew and withheld their patronage from producers and wholesalers reported and published as selling through so-called irregular channels, producers and wholesalers of coal for such territory quite generally confined the distribution of their coal to the approved channels and in numerous instances refused or discontinued dealing with consumers and competing retailers reported to them by it as not entitled to buy direct, and producers refused to supply wholesalers who made a practice of selling to consumers and to retailers so reported:

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

Mr. Walter B. Wooden for the Commission.

Mr. Stanley B. Houck, of Minneapolis, Minn., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Northwestern Traffic & Service Bureau, Incorporated, a Minnesota corporation, its officers, directors, and subscribers,² respondent Northwestern Publishing Co., a Minnesota corporation principally engaged in the publication and distribution of a coal trade journal named "The Coal Dealer," and respondent I. C. Cuvellier, individually and as president of said publishing company, with agreeing and undertaking to cooperate with one another in preventing distribution in the territory concerned other than through "regular"³ retail dealers; to coerce wholesalers and producers to confine,

² The officers and directors were made respondents as such, individually, and as representative of the subscribers, numbering about 1,800, and varying from time to time.

³ Under the constitution of the Northwestern Retail Coal Dealers Association, the activities and functions of which were taken over by respondent bureau, "any firm, individual or corporation, owning or leasing and operating a coal yard, having a set of scales, keeping an office open during regular business hours with a competent person in charge to attend to the wants of the customers at all times, and who has storage capacity (and shall at all times carry a stock of coal) commensurate to the needs of the community in which he is doing business, and is regularly engaged in the sale of coal at retail in the States of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri,

and to assist respondents in confining distribution to the so-called regular channels (i. e., producer to wholesaler, to "regular" retailer, to consumer); to prevent producers and wholesalers from selling direct to independents or consumers in their territory; and to confine retail dealers' sales to their own respective localities; all with the purpose and effect of enabling the local dealers to control the price of coal in their communities without interference from outside competition, and in pursuance of their general purposes.

Methods employed by respondent bureau, which had for its subscribers and financial supporters most of the qualified retail coal dealers, including "line yards," doing business in the territory concerned, comprising the States of Minnesota, the two Dakotas, Iowa, Nebraska, Missouri, and Kansas, in pursuance of the aforesaid common undertaking, included the following:

Soliciting and receiving from subscribers names and addresses of regular and independent dealers doing business in their respective communities, names of manufacturing plants and institutions therein and data pertaining thereto, reminding subscribers of its readiness to serve them in carrying out the undertaking hereinabove set forth, and inviting them to inform it promptly regarding activities of independents, together with such information as will aid in tracing the sources of shipments to such independents, and identifying their vendors.

Bringing pressure upon such vendors, when identified and seeking to persuade and coerce them from further selling coal to independents concerned, and others, through threats, direct or indirect, of loss of patronage by subscribers and regular dealers generally in association territory.

Notifying subscribers of the results of such efforts and of facts and of information secured, including the names of the wholesalers concerned, either directly or through publication in *The Coal Dealer*, or both, and advising and urging subscribers to withhold their patronage from offenders and notifying subscribers if and when offenders comply with the bureau's demands.

Seeking to ascertain, through inquiries of subscribers, railroads, friendly wholesalers and producers, and otherwise, producers supply-

and Kansas shall be considered a retail coal dealer and be eligible to membership in this organization."

A dealer so qualified was considered a "legitimate" or "regular" dealer and the objects of the association, taken over as above set forth by respondent bureau, were, among other things, to further the interests of its retail dealer members, qualified as above set forth, and by cooperative means to prevent wholesalers from selling coal in the territory served by the members, direct to consumers or to any others not qualified retail dealers, to confine the sales of retailers to their respective localities where they operated a yard, and to prevent producers and others from supplying coal to wholesalers who resold direct to consumers or to retailers not qualified as above stated.

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ing offending wholesalers, and thereupon bringing pressure as above set forth upon such producers to cease further supplying the offending wholesalers.

Notifying subscribers of the results of the aforesaid efforts and following the same course in relation thereto as in the case of offending wholesalers.

Publishing and issuing a directory, based on information obtained as hereinabove set forth and otherwise, containing names and locations of regular dealers, and consumers considered entitled to purchase coal direct from producers or wholesalers⁴ and sending the same freely or at a nominal charge to wholesalers and producers serving association territory, together with a communication conveying the information that the bureau operates in the interest of and with the support of its subscribers, and that the names listed are regular dealers and intimating that the recipient confined his business dealings to them in association territory; supplying such directory also to subscribers with request for corrections and revisions from them, and issuing revised directories from time to time.

Seeking through its agents to induce dealers and consumers purchasing coal from offending wholesalers or independents, to break their contracts or refuse to accept the coal upon arrival, through defamatory or disparaging statements relative to the quality thereof and the business standing and reliability of the sellers.

Soliciting and securing reports and cooperation of other associations of wholesalers and retailers both within and without association territory, in order to establish more fully the undertaking charged.

Advising respondent publishing company and respondent Cuvellier of its activities as above set forth, together with names of independents, consumers, offending wholesalers and producers concerned, in order that they may assist in shutting off supplies to such independents and consumers, in intimidating and coercing offending wholesalers and producers into refusing further sales to independents and consumers, and in forcing such wholesalers and producers to restrict their business transaction and sales to regular channels.

Respondent publishing company and respondent Cuvellier were charged with the following acts and practices in pursuance of the general undertaking hereinabove set forth.

Publication of articles and editorial comment derogatory and condemnatory of independents and producers, and wholesalers supplying the same, and contending for the so-called rights of the "equipped dealer trade."

⁴ Under respondent bureau's rule conceding such right or privilege to a manufacturing plant or public institution consuming one or more tons of coal a day.

Soliciting and securing subscribers for the publication among regular dealers in association territory, and urging and procuring them at the same time to become subscribers of or to respondent bureau.

Soliciting and securing, through articles and otherwise, from bureau subscribers and regular dealers, reports concerning activities of independents in the territory concerned, and reports concerning producers and wholesalers supplying coal thereto or to consumers.

Setting forth information so secured, in said publication, together with the names of independents and consumers concerned, and the wholesalers and producers supplying them, and comment urging or intimating that they be boycotted by regular dealers.

Soliciting, accepting and publishing only advertisements of wholesalers restricting sales to regular channels and publishing a list of such advertisers, together with favorable comment, and urging dealers to patronize the same.

Refusing advertisements of offending wholesalers pending the giving of satisfactory assurances by them of restricting their sales to regular channels in the future, or to include their names in the list of favored dealers, pending such assurances.

Publication of lists of wholesalers and producers selling to independents or direct to consumers, with condemnatory and derogatory comment.

Publication similarly of such names and comments, including names of independents, when brought to their attention by respondent bureau.

Entering into correspondence with offending wholesalers, seeking to persuade them to cease so offending, and bringing pressure to bear in the case of recalcitrant offenders through coercion and intimidation by condemnatory articles and editorials, together with suggestions or intimations of a withholding of patronage by regular dealers unless and until they cease so offending, and publication of articles, pictures and editorials containing false, derogatory, and condemnatory statements about independents involved, together with threats and intimations of withdrawal or withholding of patronage in the future with respect to wholesalers supplying the same.

Seeking to ascertain producers supplying offending wholesalers, and upon identifying them, to persuade them to refuse further supplies to such wholesalers, and using such intimidating and coercive methods and means in the case of producers not acceding, as hereinabove set out.

Assisting respondent bureau to obtain information to identify offending wholesalers by publishing the fact of the desired information, and requesting the furnishing thereof by subscribers.

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In some instances referring complaints or inquiries concerning irregular or offending sales to respondent bureau and notifying the complaining or inquiring dealer thereof.

Publishing corrected lists of names for the respondent bureau as directly hereinbefore referred to, and supplying copies thereof to the trade for and on behalf of said bureau and urging its subscribers to become subscribers to respondent bureau.

Respondent bureau subscribers, as charged, utilized the bureau and publishing company as agencies through which to take action in pursuance of the general undertaking above set forth and in so doing—

Financed and supported the bureau and its activities through yearly assessments or dues.

Reported to the bureau names, addresses, etc., of independents operating in their territory, together with information directed to identifying wholesalers supplying the same and producers supplying the wholesalers, and made similar reports to respondent publishing company.

Subscribed to the aforesaid "Coal Dealer" and made use of and acted upon the information therein supplied and reported thereto and to the bureau names of regular dealers, independents and consumers buying direct, located in their respective vicinities, and whether or not consumers so concerned were entitled to so buy under the rule hereinabove referred to.

Refused to further purchase coal from offending wholesalers brought to their attention through the bureau or through the columns of the publication herein concerned until the offending wholesalers ceased supplying independents or consumers and similarly refused to patronize offending producers supplying such wholesalers.

Individually brought persuasion, threats and other coercive measures to bear upon offending wholesalers and producers, in order to compel them to cease supplying independents, and consumers or dealers supplying independents, and also upon consumers purchasing from independents or wholesalers, seeking to prevent them, from receiving or accepting coal purchased, and making defamatory statements concerning the quality thereof and the business standing and reliability of the independent or wholesaler vendors.

In addition to the foregoing acts, respondents as charged, used and employed other equivalent and cooperative means to carry out the undertaking hereinabove set forth.

According to the complaint "the above alleged acts and things done by the respondents, and by each of them, have tended and still tend to and did and do, constrain producers and wholesalers

of coal to confine the distribution of coal in the association territory to so-called regular channels selected and approved by respondents and to prevent producers and wholesalers from selling coal to independents and direct to consumers in said territory, with the result that competition in the distribution of coal in said territory has been and is unduly obstructed and hindered and consumers in said territory have been and are deprived of the advantages 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

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the various parties mentioned in the caption hereof, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer herein, hearings were held before an examiner of the Commission theretofore duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission being fully advised in the premises makes these its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Northwestern Traffic & Service Bureau, Inc., was incorporated under the laws of Minnesota in October, 1915, as a corporation not for profit, and has continuously existed as such with its headquarters and principal office at Minneapolis in said State, except that in 1924 its name was changed to Northwestern Coal Dealers' Service Bureau. Said respondent is the outgrowth and successor of two voluntary, unincorporated associations, to wit, Iowa-Nebraska Retail Coal Dealers' Association, organized at Omaha in 1899 and Northwestern Retail Coal Dealers' Association, organized at Minneapolis, in 1901. The latter in 1909 absorbed the former and continued the work of both associations until 1915 when respondent bureau was organized. Respondent bureau has held itself out to be a body which has been continuously serving the interests of the retailers of coal in its territory for more than 25 years. Respondent bureau limits its service as did the Northwestern Retail

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Coal Dealers' Association its membership to retail coal dealers doing business in the States of Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Missouri.

PAR. 2. The purpose of incorporating respondent bureau was to escape or attempt to escape the legal liability attaching to individual membership in an unincorporated association in the event of prosecution by Federal authorities. A bureau plan of selling service contracts to retail coal dealers designated as subscribers, instead of admitting them to membership in the bureau, was decided on after two years of labor by the secretary, the executive committee and the legal department of the Northwestern Retail Coal Dealers' Association at its annual convention in July, 1915. This association elected temporary officers and directors for the purpose, and instructed them to take action to discontinue the activities of the association. This action was taken and respondent bureau was incorporated, as aforesaid, for the purpose of taking over, and it did take over, the work of said association in the same territory that the association had served. It assumed association debts, chose for officers and committee members the same persons who had acted in similar capacities in the association, and placed on its board of eight directors only one person who did not come from the final officers and directors of the association.

PAR. 3. The number of coal dealers or yards subscribing for the service of the bureau has ranged downward from 1,800 and in 1924 stood at 1,566. About 35 per cent of the subscribers are so-called line yards, that is, yards whose owners operate yards in more than one town. Eleven of these line-yard concerns operate 20 or more yards each and 15 of them operate yards in more than one State. The bureau's officers in 1924 were, and from its inception had been: H. L. Laird, of Minneapolis, secretary-treasurer; C. A. Cruikshank, of Hannibal, Mo., vice president; A. L. Havens, of Omaha, Nebr., president. Said Laird had been secretary of the bureau and its predecessors since 1907. Its directors in 1924 were said Laird, Cruikshank, and Havens, and H. T. Folsom, of Lincoln, Nebr., William Hardman, of Kansas, F. C. Potter, of Fargo, N. Dak., and J. A. Young, of Waterloo, Iowa. A sufficient amount of the capital stock of the bureau was sold to retail dealers, one share each, to provide a source from which to elect officers and directors, but the number of stockholders has always been under 20.

A \$5 charge for annual dues in the association was replaced by a \$10 yearly service charge by the bureau and this has been recently changed to a service charge based on the number of tons handled by the subscriber annually. Respondent bureau's expenditures during the years 1916 to 1923 ranged from over \$17,000 to slightly under \$14,000 per year.

Respondents, Havens, Cruikshank, Folsom, Hardman, Young, and Potter, were stockholders, officers, and directors of respondent bureau from 1915 through 1924, and with the exception of said Cruikshank are still such; respondent Rourke was a stockholder and director of said bureau from 1915 to 1919, and respondent Furber was a stockholder and director of said bureau for a short time in 1915. All of these officers and directors in their official capacities are or were charged with the management of the affairs of respondent bureau; they assist, or during their tenure of office assisted, respondent secretary in and about his activities hereinafter set out; most of them are or were subscribers or were connected with subscribers to respondent bureau and as such individually assist or assisted in carrying out the work hereinafter referred to.

Respondent Laird is, and since 1915 has been, a stockholder, a director, and the secretary-treasurer of respondent bureau, and has been secretary of it and its two predecessor associations since July, 1907; he has charge of and manages the functions and activities of respondent bureau and conducts its affairs, and in its behalf does and directs the things done by said bureau.

PAR. 4. The fuel needs of bureau territory are supplied largely from coal mines located in the States of Illinois, Indiana, Kentucky, West Virginia, and Pennsylvania, and the producers of coal in said States supply and sell that commodity in part to wholesale dealers who in turn supply and sell the same to retail dealers and consumers located at points in bureau territory. Upon receiving orders from and selling coal to said wholesalers, said producers cause the coal so sold to be shipped from their respective mines and places of business in the above-named States, into and through other States of the United States to said wholesalers or to the customers of said wholesalers at their respective points of location. Said wholesalers are located at points in the several States comprised within bureau territory, and in some instances are located in other States of the United States. Upon reselling said coal to retailers and consumers as above set out, said wholesalers cause the coal so sold to be transported from their respective places of business, or from point of origin, into and through other States of the United States to the purchasers thereof in bureau territory at their respective points of location. An important group of wholesalers who ship from their own stocks are the so-called dock companies located at Duluth, Superior, and other upper lake points. The retail dealers above referred to who are thus supplied with coal by said wholesalers, include the bureau subscribers. In frequent instances producers of coal sell their commodity at wholesale direct to retail dealers and consumers in bureau

territory, and the term "wholesalers" is hereinafter used as referring to producers so wholesaling, as well as to wholesalers who purchase the coal in which they deal from producers.

PAR. 5. Respondent bureau is and has been engaged and its predecessor associations before it, in furthering the interests of retail coal dealers affiliated therewith; in various ways, some of which are beyond the purview of this proceeding. The object and purpose of respondent bureau and of its predecessors is and has been to confine the distribution of coal in bureau territory to so-called regular channels and to prevent its distribution through so-called irregular channels. The channels which the bureau considers regular are:

(a) The retail dealer who owns or leases, and operates a coal yard, has a set of scales, keeps an office open during regular business hours with a person to wait on customers at all times, has storage capacity and carries a stock of coal commensurate with the needs of his community, and is regularly engaged in the retail coal business.

(b) Sales by producers and wholesalers direct to consumers are a regular channel only when the consumer is a steam plant located on railroad tracks and uses 300 tons or more per year.

The channels which the bureau considers irregular are as follows:

(c) Sales by producers and wholesalers direct to a consumer are irregular regardless of quantity unless he be located on railroad track. This includes public buildings, schools, hospitals, hotels, office buildings and consumers of that type, as well as the ordinary household consumer whether buying singly or collectively. Sales and shipments by producers to wholesalers who supply such consumers are also held to be irregular by respondent bureau.

(d) Retail dealers are considered irregular channels when they sell and deliver out of railroad cars without operating a retail yard, when they are not located on track, even though trackage sites are unavailable, when they do not maintain continuous service throughout the year, when they are not equipped with sheds, bins, and scales, the bureau making no allowance for the fact that municipal ordinances in some towns in bureau territory require that all coal be weighed on city scales, when they undertake to ship coal into towns where regular dealers operate yards and the shipping dealers do not, and in some instances when dealers sell at prices below the prevailing retail level. Sales and shipments by producers and wholesalers to retailers of the above description are considered irregular except that in some instances branches of line yards affiliated with the bureau are not held to the requirement of continuous service. The term "snowbird" is applied by the bureau and its subscribers to all retailers who come within the classes described. Sales and shipments

by producers to wholesalers who regularly supply the above-described retailers are also considered irregular by respondent bureau.

PAR. 6. In order to accomplish the aforesaid object and purpose, respondent bureau, its officers and directors, have adopted and with the cooperation of bureau subscribers have used the following methods and practices:

(a) They have solicited and received from bureau subscribers reports giving the names and addresses of "regular" dealers operating and doing business in a community wherein the reporting subscriber in each instance is located; the names of manufacturing plants and public institutions in the vicinity and the amount of coal consumed by each. Said reports are usually made by said subscribers upon blanks furnished by the bureau for that purpose, and the subscribers, at the bureau's invitation, furnish other information bearing upon the distribution and consumption of coal in said vicinity, including the names and addresses of "snowbirds" and "irregular" dealers.

(b) They have prepared from the foregoing reports made by subscribers and from other sources a directory of the names and locations of "regular" dealers and such consumers as are, in the opinion of the bureau and its subscribers, entitled to purchase coal direct from producers or wholesalers under the rule and definition in that respect adopted by respondents, to wit, that a manufacturing plant or public institution consuming one or more tons of coal per day and not requiring team delivery, shall be entitled to purchase direct. The bureau sends these directories on request to shipping companies who use them as a guide in making quotations and shipments, and to subscribers for their information in the premises and to assist them in cooperating with the bureau and other respondents in carrying on the work aforesaid. The bureau requests and receives from subscribers to whom said directory is sent corrections and revisions of, and additions to, the lists contained in said directory, and from time to time issues a revised directory by means of the information thus received and otherwise.

Prior to 1920 no charge was made to shippers for these directories and the charge made since then has paid little more than one-half the cost.

(c) They have solicited and received reports from bureau subscribers of shipments which arrive in the subscribers' respective towns, consigned to consumers or to retail dealers who do not come within the bureau's definition of so-called regular channels. Subscribers are requested to report and they do report to the bureau such shipments, including the names of railroads delivering the coal

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and initials, car number and other marks on the freight cars employed, and all available data tending to identify the shipper, the point of origin, the mine from which shipped, and the consignee. Subscribers to respondent bureau have at times obtained such information from employees and records of the railroads handling so-called irregular shipments and have transmitted it to the bureau with a statement that it was obtained from such sources. The Commission takes judicial notice of the act of Congress dated June 18, 1910 (36 U. S. Stats. p. 553), declaring it unlawful for any common carrier or its agent "knowingly to disclose to or permit to be acquired" by any one other than a shipper or his consignee, "any information concerning the nature, kind, quantity, destination, consignee, or routing" * * * "which may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor"; also for "any person or corporation to solicit or knowingly receive any such information which may be so used."

(d) Respondent bureau, its officers and agents promptly use the information supplied by bureau subscribers as set forth in paragraph 6 (c) herein to trace the shipments so reported and to locate and identify the person or concern by or on whose behalf the so-called irregular sale was made. Respondent bureau carries on correspondence with the sellers and shippers so identified. It seeks acknowledgment from them that they made the so-called irregular shipment in question, informs them that their customer is not considered legitimate trade for the wholesale shipper, and solicits assurances that further sales and shipments will not be made to that customer or to any other buyer whom the bureau does not recognize as entitled to buy direct. In writing producers whose coal has been sold by wholesalers to so-called irregular buyers, the bureau informs them that they are held responsible for the policy or mistakes of their wholesalers. In tracing irregular shipments the bureau sends form letters to suspected or ascertained shippers asking for information on specific shipments described by car number, name and address of consignee, point of origin, and date of delivery, stating that the information is desired only for the benefit of the subscriber who reported the shipment. These letters, however, show that the bureau has subscribers in seven specified States.

(e) Respondent bureau uses another form letter which it circulates among shippers when it is advised by subscribers that certain parties not recognized as legitimate wholesale trade are seeking shippers who will supply them. This form letter requests the shipper to advise respondent bureau if he has any inquiries for quotations and

shipments from the particular party, and states that the bureau has information of value about such party.

The bureau also frequently sends shippers lists of "The Only Equipped Retail Coal Dealers" in towns where "snowbirds" and other "irregulars" are located. During a period of less than nine months ending in February, 1922, it sent a single dock company at Minneapolis eight of these "regular dealer" lists, nine letters of the tracer type and fifty-six of those stating that the bureau had information of value to the shipper on specified "snowbirds" and other "irregular" buyers.

(f) The bureau advises shippers suspected of selling or ascertained to have sold so-called irregular trade that the bureau subscribers are interested in knowing what is and will be their policy in selling to such trade. It threatens the offender, directly or by intimation, that bureau subscribers and "regular dealers" generally in bureau territory will refuse to patronize him unless and until he ceases selling to the particular "irregular" buyer in question and confines himself generally to the trade which the bureau and its subscribers consider legitimate for the wholesale shipper.

(g) Respondent bureau gives its subscribers who report so-called irregular shipments the results of its efforts to trace same to the responsible shipper and the nature of the shipper's response, whether favorable or unfavorable to the bureau's contention that they are shipping to "irregular" trade and whether giving or refusing to give satisfactory assurances as to future conduct.

(h) Respondent bureau, its officers and employees, have intimidated and attempted to intimidate shippers from selling to so-called irregular trade by intimations that they could not expect the patronage of the so-called regular dealer if such sales became known. A representative of respondent bureau has intimidated and attempted to intimidate persons from acting as agents of concerns which make it a policy to sell direct to consumers, by posing as a Government agent and intimating that the Government was about to prosecute their principals for misrepresentation and misbranding.

(i) Respondent bureau has circulated statements among shippers concerning the status, equipment, and business methods of retail dealers considered by it irregular, which statements were false, disparaging and calculated to cause shippers to refuse or discontinue business relations with such dealers. Dealers admittedly competing with bureau subscribers for the trade of consumers were reported by the bureau to shippers as being themselves consumers. Dealers admittedly having some equipment were reported by the bureau to shippers as having no equipment whatever. Dealers having scales,

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bins and sheds were reported by the bureau to shippers as not having such equipment. The bureau ordinarily accepted without question or verification the reports which its subscribers made to it about the status and equipment of their alleged irregular competitors.

(j) Respondent bureau has circulated among such of its subscribers as were troubled with so-called irregular competition, propaganda to the effect that coal handled through such channels was uniformly of poor quality and such as could not be sold by the so-called regular dealers with satisfaction to their customers, whereas in fact the coal so handled was in many instances of good quality and in some cases originated at mines widely recognized as producers of good coal.

(k) Respondent bureau, its officers and subscribers, have sought and secured the cooperation and assistance of the Midwest Retail Coal Dealers Association operating in the State of Missouri, and have exchanged information with it for the purpose of confining the coal trade to the channels jointly approved by them as regular.

(l) Respondent bureau, its officers and subscribers, have negotiated and entered into agreements and understandings with various associations of coal shippers, for the purpose of preventing the sale of coal by members of such shippers' associations to so-called irregular channels and facilitated the execution of said agreements and understandings by frequently informing such associations and their members that certain parties were not recognized as legitimate trade for the wholesale shipper.

(m) Respondent bureau, its officers, employees, and subscribers have from time to time supplied respondents, Northwestern Publishing Co. and I. C. Cuvellier with and procured the publication of false, derogatory, and damaging reports concerning the quality of coal handled through so-called irregular channels and the status, equipment, and business methods of persons so engaged, in the Coal Dealer, a trade paper published monthly at Minneapolis, Minn., by the Northwestern Publishing Co. and I. C. Cuvellier, respondents herein.

(n) When offending shippers fail or refuse to assure respondent bureau and its complaining subscribers that they will refrain from selling to alleged "irregular" buyers, the bureau, its officers and employees, supply information to that effect, together with reports of specific instances of "irregular" sales, to the aforesaid the Coal Dealer. The bureau supplies said information for purposes of publication and procures its publication in said paper, well knowing that so-called regular dealers will refuse to patronize the shippers so reported and published and intending such to be the result. More

than 1,000 of the subscribers to the bureau are also subscribers to the Coal Dealer and the great majority of the Coal Dealers' subscribers are retail coal dealers in bureau territory.

PAR. 7. The aforesaid methods and purposes of respondent bureau, its officers, directors and subscribers, have tended to produce and have produced the following results:

(a) So-called regular dealers operating in bureau territory, including subscribers to respondent bureau, have withdrawn and withheld their patronage from producers and wholesalers reported and published as selling through so-called irregular channels.

(b) Producers and wholesalers of coal shipped into and sold in the various States where respondent bureau and its subscribers operate, have quite generally confined the distribution of their coal to the so-called regular channels approved by respondent bureau and its officers and subscribers. Said producers and wholesalers have been well aware of the hostile attitude of the retail trade toward concerns reported and published as being the source of supply for alleged irregular buyers.

(c) In numerous specific instances producers and wholesalers of coal have refused to sell or have discontinued selling to persons reported to them by the bureau as not entitled to buy direct. In some cases the persons so reported and so refused were consumers. In many cases the persons so reported and so refused were retailers competing with respondent bureau subscribers and falsely reported by them to be without any equipment. In some cases the shippers refused to sell the persons so reported against their own judgment of the status of the customers in question.

(d) Producers have refused to supply wholesalers who made it a practice of selling to consumers and to retailers whom respondent bureau reported as not entitled to buy direct from the wholesale trade.

CONCLUSION

The practices of respondent bureau, its officers and directors, as set forth in paragraph 6 of the foregoing findings as to the facts, in the circumstances set forth in paragraphs 1 to 5, inclusive, and in paragraph 7 thereof, constitute a combination and conspiracy to restrain the trade of competitors of respondent bureau subscribers, of consumers seeking to buy at wholesale, and of producers and wholesalers selling to such competitors and consumers. Said practices are to the injury and prejudice of the public and constitute unfair methods of competition in interstate commerce in violation of the provisions of the act of Congress approved September 26,

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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

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the various parties mentioned in the caption hereof, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer herein, and the Commission having made its findings of fact and reached the conclusion that certain respondents herein have violated section 5 of the act creating the Federal Trade Commission, fixing its powers and duties,

Now, therefore, it is ordered, That respondents Northwestern Traffic & Service Bureau, Inc., its successor by change of name, Northwestern Coal Dealers' Service Bureau, its officers and directors: A. L. Havens, president and a director of said corporation; C. A. Cruikshank, as vice president and a director of said corporation; H. L. Laird, as secretary-treasurer and a director of said corporation; H. T. Folsom, as a director of said corporation; William Hardman, as a director of said corporation; F. N. Furber, as a director of said corporation; J. A. Young, as a director of said corporation; C. F. Rourke, as a director of said corporation; F. C. Potter, as a director of said corporation, cease and desist from:

1. Supplying to I. C. Cuvellier, the Northwestern Publishing Co., or any other medium of publicity, information concerning sales made by particular shippers to alleged irregular trade, for the purpose of notifying so-called regular dealers of such sales and of compelling such shippers to discontinue such sales or to forego the patronage of the so-called regular dealers.

2. Supplying I. C. Cuvellier, the Northwestern Publishing Co., or any other medium of publicity, information concerning purchases made by particular buyers alleged to be irregular, for the purpose of notifying shippers that said buyers are not recognized as entitled to buy direct from them.

3. Preparing, publishing, and circulating among shippers for the purpose of preventing any one buying direct from producer or wholesaler, information in the form of directories or otherwise to the effect that specified persons or concerns are recognized as entitled to buy direct from producer or wholesaler and that other persons, concerns, or classes thereof, are not so entitled.

4. Soliciting, accepting, or acting upon reports from respondent bureau subscribers concerning the arrival, delivery, or origin of shipments made to persons or concerns not recognized as entitled to buy direct from producer or wholesaler, for the purpose of preventing further dealings between such buyers and the producers or wholesalers selling them.

5. Soliciting, receiving, or acting upon reports made by respondent bureau subscribers or others concerning so-called irregular shipments where such reports are known to be based upon information coming from the employees or records of common carriers engaged in the transportation of coal.

6. Communicating with shippers suspected of selling to alleged irregular buyers for the purpose of tracing such transactions and preventing further sales to them, or to others who supply them.

7. Stating or intimating to shippers suspected, accused or found guilty of selling to so-called irregular buyers that if such sales became known, the so-called regular dealers would withhold or withdraw their patronage.

8. Making or circulating among shippers false and defamatory reports concerning the status, equipment, and business methods of retailers who compete with bureau subscribers, for the purpose of inducing shippers not to sell to such retailers.

9. Making to or circulating among subscribers to the bureau or so-called regular dealers, false, defamatory, and undiscriminating reports concerning the quality and grade of coal handled through so-called irregular channels.

10. Cooperating with other organizations of retail coal dealers and with organizations of wholesale shippers, for the purpose of confining the distribution of coal to so-called regular channels and preventing its distribution otherwise.

11. Intimidating the agents and customers of wholesale shippers who sell so-called irregular trade from having or continuing business relations with such shippers.

12. Supplying so-called regular dealers with information concerning sales made by particular wholesale shippers to particular "irregular" buyers, for the purpose of preventing such shippers and buyers from continuing business relations with each other.

13. Taking any step and doing any act or thing with the purpose and for the object of preventing producers and wholesalers of coal from selling freely to consumers and retailers of any class or description and of preventing consumers and retailers of any class or description from purchasing freely from producers and wholesalers.

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It is further ordered, That respondent bureau, its officers and directors, shall file with the Commission, within sixty days after the service upon them of a copy of this order, their report in writing stating in detail the manner and form in which they have complied with the order to cease and desist herein set forth.

It is further ordered, That the complaint herein as to the subscribers to respondent Northwestern Traffic & Service Bureau, Inc., be and is hereby dismissed.

ORDER OF DISMISSAL AS TO CERTAIN RESPONDENTS

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and the Commission having made its findings as to the facts and being fully advised in the premises:

Now, therefore, it is ordered, That the complaint herein as to respondents Northwestern Publishing Co. and I. C. Cuvellier, individually and as president of said Northwestern Publishing Co., be and is hereby dismissed.

Syllabus

IN THE MATTER OF

ABRAHAM KRITZER, ARTHUR KRITZER, AUGUSTA
KRITZER, AND CLARA KRITZER

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

Docket 1192. Complaint, June 17, 1924¹—Decision, Nov. 24, 1926

Where the city of Grand Rapids, Mich., had long been known as a large and important center of the furniture manufacturing industry in the United States, furniture there manufactured was extensively advertised, sold and distributed among the trade and purchasing public as "Grand Rapids furniture," and such furniture had come to enjoy a widespread popularity, high reputation and good will, and great demand by the purchasing public, and to be preferred by many to furniture made elsewhere; and thereafter various individuals engaged jointly and in association with one another and also through a corporation organized and owned by them, in the sale at retail in and from New York City of furniture, of which only an unsubstantial and inconsequential amount was made in Grand Rapids; and neither representatives, agents or warehousemen, of any furniture manufacturers, nor at any time selling out the stock of any Grand Rapids manufacturers retiring from business, nor acting in any way in behalf of such manufacturers, nor manufacturers themselves of the furniture dealt in by them, which they purchased outright and in the usual course of commerce from manufacturers or other dealers and resold to the purchasing public as retail dealers, at prices fixed by them, which included their costs and profits and those of the manufacturers;

- (a) Carried on their business and advertised the furniture dealt in by them under such trade names and styles as "Grand Rapids Salesrooms," "Grand Rapids Furniture Co.," "Furniture Manufacturers' Warehouse," and "Furniture Manufacturers' Auction Outlet";
- (b) Represented by means of large and conspicuous display signs and numerous advertisements conspicuously published in newspapers of general circulation that the furniture advertised and sold by them was genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich., and that they offered for sale and sold large quantities of such furniture including hundreds of suites of living room furniture; and
- (c) Similarly represented that they were the manufacturers of the furniture dealt in by them or the warehousemen, representatives, branches or agents of the manufacturers thereof, that they were selling the furniture in question at manufacturers' prices for the account and on behalf of such manufacturers, and that furniture sold and distributed by them came direct from the manufacturers to their own customer purchasers without the intervention of middlemen, thereby eliminating and saving to such customer purchasers the costs and profits of middlemen;

With the effect of misleading and deceiving the purchasing public, and thereby causing many thereof to purchase their furniture, and of unfairly diverting trade from and injuring competitors dealing in furniture made in Grand

¹Amended complaint, Oct. 29, 1924.