

Syllabus

IN THE MATTER OF
WHOLESALE GROCERS' ASSOCIATION OF NEW
ORLEANS, ITS OFFICERS AND MEMBERS

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

Docket 1343. Complaint, Aug. 6, 1925—Decision, Nov. 17, 1927

Where an association of wholesale grocers; and the officers and members thereof; in pursuance of an agreement, understanding, or conspiracy to confine distribution of the products dealt in to the so-called regular and legitimate channels of trade, i. e., manufacturer to wholesaler to retailer to consumer, and to prevent irregular and illegitimate dealers, i. e., dealers doing both a wholesale and retail business, or a retail business only, and purchasing enterprises of retail dealers buying the products concerned in wholesale quantities directly from the manufacturer and producer, from so obtaining such products, and thereby to suppress competition;

- (a) Held meetings for the interchange of information and the discussion and adoption of plans and measures for the carrying out of their undertaking;
- (b) Notified manufacturers and producers thereof, and its purposes, and sought to procure and procured many of them to abide by and adhere thereto;
- (c) Sought to compel and compelled many of the aforesaid manufacturers and producers, by boycott and threats thereof, and by other means of intimidation and coercion, to sell their products only to regular and legitimate wholesalers, thereby practically confining their sales to members of the association, and to refrain from selling the same to irregular and illegitimate dealers;
- (d) Sought and secured names of irregular and illegitimate dealers and reported the same to the aforesaid manufacturers and producers, and induced and compelled the same by the means and methods above set forth to cease dealing with and refuse to open new accounts with such dealers;
- (e) Sought and ascertained instances of sales by said manufacturers and producers to irregular and illegitimate dealers, together with the names of the vendees, by means of espionage at wharves, freight stations, warehouses, and other places, and sought to compel and compelled them by boycott and threats thereof to refrain from selling and supplying their products to said dealers thereafter; and
- (f) Sought to induce and induced and compelled many brokers and agents, by abusive language, intimidation, threatened boycott, and other means of coercion to refrain in the future from soliciting business from and supplying products to irregular and illegitimate dealers, and induced and compelled many of them to urge and advise their principals so to do, many of whom thereafter did so refrain;

With the result that certain outlets in the territory concerned for the direct and immediate sale of groceries by manufacturers and producers in other States were closed; commerce was regulated by eliminating therefrom so-

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called irregular and illegitimate dealers, and manufacturers and producers selling thereto, and by restricting such commerce to those manufacturers as would and did abide by and aid the aforesaid plan and limitation; competition in such territory was substantially lessened and suppressed and the natural flow of commerce in the channels of interstate trade was obstructed; and dealers in and consumers of the commodities involved in such territory were denied those advantages in price and otherwise which they would obtain from the natural flow of commerce in such commodities under conditions of free and unobstructed competition;

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

Mr. A. R. Brindley for the Commission.

McCloskey & Benedict, of New Orleans, La., 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 Wholesale Grocers' Association of New Orleans, a voluntary unincorporated association; its officers; and the members thereof, purchasing the products dealt in by them from manufacturers and producers located for the most part in States other than Louisiana (which manufacturers and producers in many instances negotiated the sale to respondent members and other dealers through brokers and other representatives in New Orleans), and naturally and normally in competition with one another in price and otherwise "but for the matters and things hereinafter alleged and set out," and in competition with others engaged in the purchase of groceries and allied products from the aforesaid manufacturers and producers; with uniting in a common course of action and cooperating and confederating together to confine distribution of groceries and allied products in Louisiana and neighboring States to the so-called regular legitimate channels of trade, to prevent irregular and illegitimate dealers from obtaining supplies directly from such manufacturers and producers, and thereby to suppress competition and especially competition in price in the aforesaid territory.¹

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

"To carry out aforesaid mutual purposes respondents by joint action of various respondent members, have done and still do, among others, the following acts and things":

Hold meetings for the interchange of information and the discussion and adoption of plans and measures;

Notify manufacturers and producers of their purpose and undertake and seek to induce and compel them by persuasion, intimidation and coercion, boycott and threats thereof, to refrain from selling to irregular and illegitimate dealers;

Seek and secure the names of the latter and report the same to manufacturers and producers and induce and compel them to refrain from dealing with dealers so reported;

By means of espionage at wharves, stations, and other places seek and ascertain instances of sales to irregular and illegitimate dealers and bring pressure, as above set forth, upon manufacturers and producers to refrain from further sales to said dealers;

Through their committee advise manufacturers' brokers and agents, and induce and compel them, by means of abusive language and other means of intimidation and coercion, as above set forth, to refrain from further supplying or dealing with objectionable dealers as above set forth, and also to advise and urge their principals to adopt the same course;

The effect and result of the above alleged acts and things done by respondents, as charged by the complaint, "has been and now is to close certain of the outlets within aforesaid territory served by respondents for the direct and immediate sale by manufacturers and producers in other States of groceries and allied products shipped by them into said territory; to regulate such commerce by eliminating therefrom said so-called irregular and illegitimate dealers and manufacturers and producers who sell to such dealers, and by restricting said commerce to such manufacturers and to such dealers as will, and do, abide by, adhere to and aid the plan and limitation of trade hereinbefore described; to substantially lessen, hinder, and suppress competition in the sale and distribution of groceries and allied products in the aforesaid territory served by respondents; to obstruct the natural flow of commerce in the channels of interstate trade, and to deny to dealers in and consumers of said commodities in said territory those 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 practices are all to the prejudice of the public, of respondents' competitors and of manufacturers and dealers not complying with and adhering to the aforesaid plan and limitation of trade, and con-

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stitute 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon Wholesale Grocers' Association of New Orleans and on each and all of the parties named in the complaint and in the caption hereof, and charged them with using unfair methods of competition in commerce in violation of the provisions of said act. Thereupon all the respondents named in the complaint and in the caption hereof² entered their appearance by their attorneys, filed their answers to the complaint, and admitted certain allegations therein and denied other allegations thereof.

Thereafter the respondents filed herein an amended or supplemental answer which is as follows:

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In the matter of Wholesale Grocers' Association of New Orleans, Its Officers and Members.	}	Before the Federal Trade Commission, United States of America.
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And now before this Honorable Commission, under the above entitled and numbered cause, again come the Wholesale Growers' Association of New Orleans, its officers and members, and particularly the individuals referred to in its original answer, and for supplemental answer, say:

"That your respondents, the said Wholesale Grocers' Association of New Orleans, and its officers and members thereof, and the original defendants herein impleaded, do hereby formally withdraw the original answer by them filed, desire to waive hearing on the charges set forth in the complaint, and not to contest the proceeding, and hereby formally consent that the Commission may make, enter and serve upon your respondents and each of them, an order to cease and desist from the violations of the law alleged in the complaint; all in conformity to the law in such cases made and provided, and

² See pars. 1 and 2 of findings for enumeration.

agreeably to paragraph 2 of article 3 of the Rules of Practice and Procedure before the Federal Trade Commission, as amended June 30, 1927. Wherefore, they and each of them pray accordingly and for general relief."

The answer of the respondents, as above set out, was thereupon regularly considered and understood by the Commission and the Commission duly ordred that the respondents be allowed to withdraw their original answer in this proceeding, and that such amended answer be received and filed and made a part of the record herein as the answer of the respondents to the complaint. Thereafter this proceeding came on for decision and the Commission, having duly considered the record, now makes its report in writing and states its findings as to the facts and its conclusions therefrom in conformity to law.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Wholesale Grocers' Association of New Orleans is a voluntary unincorporated association of individuals, partnerships, and corporations with their respective places of business in the city of New Orleans, State of Louisiana, and is engaged in selling groceries and allied products at wholesale to retail dealers located at points in the State of Louisiana and in neighboring States. Said members are banded together in said association for the purpose of promoting and protecting their common interests and business affairs. George P. Thompson, C. W. Mackie, W. B. Sirera, and H. S. Herring are respectively president, first vice president, second vice president, and secretary of said association.

PAR. 2. The following named respondents are the members of said association: H. T. Cottam & Co., a corporation organized under the laws of the State of Louisiana; Schmidt & Zeigler, Ltd., a corporation organized under the laws of the State of Louisiana; George A. Weigand and A. C. St. Mark, partners doing business under the trade name and style of G. A. Weigand & Co.; J. & N. Schwabacher, a corporation organized under the laws of the State of Louisiana; Kohlman Bros. & Sugerman, Inc., a corporation organized under the laws of the State of Louisiana; Hugh McCloskey, Joseph McCloskey, and Harry B. McCloskey, partners doing business under the trade name and style, McCloskey Bros.; S. Pfeifer and A. B. Newman, partners doing business under the trade name and style of S. Pfeifer & Co.; H. Lochte & Co., a corporation organized under the laws of the State of Louisiana; Weiss-Frank & Co., a corporation organized under the laws of the State of Louisiana; Woodward, Wight & Co., a corporation organized under the laws of the State

of Louisiana; Charles Dennery, Inc., a corporation organized under the laws of the State of Louisiana; Interstate Wholesale Grocers, Inc., a corporation organized under the laws of the State of Louisiana; A. Adler & Co., Inc., a corporation organized under the laws of the State of Louisiana; Goodman-Beer & Co., a corporation organized under the laws of the State of Louisiana; and Albert Mackie Co., a corporation organized under the laws of the State of Louisiana. Said named members are hereinafter referred to as respondent members.

Respondents Harry Goodman, Harry Hyman, George A. Weigand, Charles W. Zeigler, E. J. Domerque, and C. P. Judkins are respectively officers of or financially interested in sundry of above-named members of respondent association.

PAR. 3. Respondent members purchase aforesaid products in which they deal directly and immediately from manufacturers and producers thereof located for the most part in States other than the State of Louisiana, and said manufacturers and producers ship said products when so purchased from their respective places of business in such other States to respondent members in the State of Louisiana. In many instances said manufacturers and producers negotiate sales of aforesaid commodities to respondent members and to other dealers located in said territory served by respondent members, through brokers and other representatives located in said city of New Orleans, and who act as agents for said manufacturers and producers in the premises. In the course and conduct of their aforesaid respective businesses respondent members but for the matters and things hereinafter alleged and set out would be naturally and normally in competition with each other in price and otherwise, and are in such competition with other individuals, partnerships, and corporations also engaged in the purchase of groceries and allied products from aforesaid manufacturers and producers and the resale thereof in the State of Louisiana. Respondents regard and designate the channel of distribution commencing with the manufacturer, flowing thence to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consuming public as the only regular and legitimate channel of distribution of aforesaid products in which they deal and which is by them regarded and denominated the regular and legitimate channel of distribution. Channels of distribution originating with the manufacturer which do not flow through the wholesale dealer, but go direct to dealers doing both a wholesale and retail business or a retail business only, and to purchasing enterprises of retail dealers banded together to buy said products in wholesale or jobbing quantities directly from the manu-

facturer and producer, are by respondents regarded and designated as irregular and illegitimate channels of trade, and aforesaid dealers acquiring goods through said so-called illegitimate channels are by respondents regarded and designated irregular and illegitimate dealers.

PAR. 4. For a period of about five years last past, respondents have united in a common course of action and have cooperated and confederated together and with each other to confine the distribution of groceries and allied products in aforesaid territory served by respondent members, to said so-called regular and legitimate channels of trade, and to prevent said so-called irregular and illegitimate dealers from obtaining groceries and allied products directly from such manufacturers and producers thereof, and thereby to suppress competition, and especially competition in price in the sale of said groceries and allied products in said territory served by respondent members. To carry out such mutual purposes respondents by joint action of various respondent members, have done and still do, among others, the following acts and things:

(a) Hold meetings for the interchange of information concerning and the discussion and adoption of plans and measures for the carrying out of their said undertaking.

(b) Notify aforesaid manufacturers and producers of said undertaking and its said purposes and seek to and do procure many said manufacturers to abide by and adhere thereto.

(c) By threats of boycott and boycott, and by other means of intimidation and coercion, seek to and do compel many aforesaid manufacturers and producers to sell the groceries and allied products in which they deal only to said so-called regular and legitimate wholesale dealers, thereby practically confining such sales to the members of respondent association, and to refrain from selling said products to said so-called irregular and illegitimate dealers.

(d) Seek for and secure the names of so-called irregular and illegitimate dealers and report said names to aforesaid manufacturers and producers, and by the means and methods in these specifications above set out, induce and compel said manufacturers to cease dealing with and to refuse to open new accounts with the dealers so reported.

(e) Through and by means of espionage at wharves, docks, freight stations and warehouses of common carriers, and at other places at which merchandise is unloaded, discharged, stored and delivered, and by and through other means, respondents seek for and ascertain instances of sales of said products by said manufacturers and producers to said so-called irregular and illegitimate dealers, together with the names of such vendees, and thereupon by threats of boy-

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cott and by boycott seek to and do compel such manufacturers to refrain from selling and supplying said products to said dealers in future.

(f) In the month of January, 1924, a committee composed of respondents George P. Thompson, C. W. Mackie, W. B. Sirera, Harry Goodman, Charles W. Zeigler, E. J. Domerque, C. P. Judkins and Harry Hyman, acting for and on behalf of respondent association and its members, called before said committee many aforesaid brokers and other agents of said manufacturers and producers, and thereupon by means of abusive language, intimidation and other means of coercion, including threats of boycott, sought to and did induce and compel many of said brokers and agents to refrain in future from soliciting business from, and supplying aforesaid products to, said so-called irregular and illegitimate dealers, and induced and compelled many of said brokers and agents to urge and advise their said principals to refrain in future from selling and supplying said products to said so-called irregular and illegitimate dealers, with the result that many said principals have since said time refrained from so selling and supplying said products.

(g) Respondents use other cooperative and individual means to carry out and make effective their aforesaid undertaking.

PAR. 5. The effect and result of the above acts and things done by respondents has been and now is to close certain of the outlets within aforesaid territory served by respondents for the direct and immediate sale by manufacturers and producers in other States of groceries and allied products shipped by them into said territory; to regulate such commerce by eliminating therefrom said so-called irregular and illegitimate dealers and manufacturers and producers who sell to such dealers, and by restricting said commerce to such manufacturers and to such dealers as will, and do, abide by, adhere to and aid the plan and limitation of trade hereinbefore described; to substantially lessen, hinder, and suppress competition in the sale and distribution of groceries and allied products in the aforesaid territory served by respondents; to obstruct the natural flow of commerce in the channels of interstate trade, and to deny to dealers in and consumers of said commodities in said territory those 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.

CONCLUSION

The acts, methods, and practices of the respondents as set forth in the foregoing findings as to the facts constitute unfair methods

of competition in commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding was heard by the Federal Trade Commission upon the complaint duly issued by the Commission and on the answer of the respondents thereto. Thereupon the Commission made its report in writing in which it stated its findings as to the facts and its conclusion that the respondents have been using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

Therefore, it is ordered, That the Wholesale Grocers' Association of New Orleans, its officers and members and all other respondents named in the complaint and in the findings as to the facts, and their agents, representatives and employees, forthwith cease and desist from following a common course of action pursuant to any agreement, understanding, combination, or conspiracy among themselves or with persons not parties hereto for the purpose or with the effect, directly or indirectly, of lessening competition in the course of interstate trade or commerce in groceries or allied products by any of the following means or methods, viz:

(a) By holding meetings for the interchange of information concerning, and the adoption and discussion of plans and measures for, the carrying out the above described undertakings, or similar undertakings;

(b) By notifying manufacturers and producers of groceries or allied products of such undertakings and their purpose and effect, and by seeking to procure or procuring any manufacturers or producers to abide by such agreements or undertakings or similar agreements or undertakings on the part of respondents or any of them;

(c) Seeking by boycotts and by other means of intimidation and coercion to compel manufacturers and producers of groceries and allied products to sell the groceries and products in which they respectively deal only to wholesale dealers who are classified by respondents or any of them as so-called regular and legitimate dealers in groceries and allied products, and seeking to confine sales to the members of the respondent association, and seeking to restrain such manufacturers and producers from selling their respective products to so-called irregular and illegitimate dealers;

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(d) Seeking or securing the names of so-called irregular or illegitimate dealers in groceries and allied products, and reporting the names of such dealers to manufacturers and producers of groceries and allied products, and inducing or compelling such manufacturers and producers to cease dealing with or to refuse to deal with such dealers;

(e) By espionage at wharves, docks, freight stations and warehouses, and at other places at which merchandise is unloaded, discharged, stored and delivered, for the purpose of ascertaining sales of groceries and allied products by manufacturers and producers thereof to so-called irregular and illegitimate dealers, and by threats of boycott or by boycotting, seeking to induce manufacturers to refrain from selling or supplying such products to such dealers;

(f) By using any other cooperative, mutual or individual means to carry out any of the methods or undertakings herein described with the intent or effect of lessening competition in interstate trade or commerce in groceries and allied products.

It is further ordered, That the respondents, within 60 days from the date of this order, file with the Federal Trade Commission a report in writing stating the manner in which compliance with this order has been made.

Complaint

IN THE MATTER OF

MORTON F. BAUM AND MARCUS BAUM, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE MICHIGAN SAMPLE FURNITURE CO.

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

Docket 1150. Complaint, Apr. 5, 1924—Decision, Nov. 28, 1927

Where a firm engaged as retail furniture dealers in the sale and distribution of household furniture, and selling their furniture at substantially prevailing retail prices, including the costs and profits of the manufacturers, and of the wholesalers from whom they purchased said furniture, as well as their own costs and profit, and neither manufacturing any of such furniture nor selling the same direct from factory to consumer, nor eliminating middlemen who customarily participate in the marketing of furniture from manufacturer to retailer,

- (a) Represented, described, advertised, offered and sold large quantities of furniture made of woods other than walnut, chiefly gumwood, stained and finished so as to resemble walnut in general appearance and color, as and for walnut, with the effect of causing many of the consuming public to purchase the same as and for genuine walnut furniture; and
- (b) Represented in their advertising matter that they were selling their furniture at prices substantially lower than prevailing retail prices, and in some instances at manufacturer's cost, and direct from the manufacturer at wholesale prices;

With the capacity and tendency to mislead and deceive the consuming public into purchasing such furniture in reliance upon the truth of the aforesaid representations, and with the effect of so doing in the case of a substantial number, and of unfairly diverting trade from competitors engaged in the sale of genuine walnut furniture, under truthful representations, competitors engaged in the sale of furniture finished to resemble the same, but in nowise misrepresented, and competitors engaged in the sale and distribution of furniture at prevailing retail prices without representing the same as offered at less than such prices or at prices eliminating all profits and equal to manufacturing costs only, or as sold and distributed direct from manufacturer to consumer:

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

Mr. Henry Miller for the Commission.

Mr. Samuel J. Houston, of Philadelphia, Pa., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual,¹ engaged in the sale of furniture at retail to

¹ See second paragraph of "Report, Findings," etc., below.