

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, MARCH 24, 1931, TO DECEMBER 23, 1931

IN THE MATTER OF

MERCERIZERS ASSOCIATION OF AMERICA 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 1755. Complaint, Feb. 5, 1930. Decision, Mar. 24, 1931

Where an association of individuals, partnerships and corporations engaged in manufacturing, mercerizing and processing plied cotton yarns and/or selling same to manufacturers of hosiery, underwear and other garments; and the officers, and members, occupying a dominant and preponderant position in the business concerned, and normally and naturally in competition with one another; in pursuance of a conspiracy to restrict, restrain and suppress competition in sale and distribution of said product at wholesale to garment manufacturers throughout the United States,

- (a) Adopted and fixed uniform prices, terms and discounts to govern sale of said products, and uniform charges for extra processing such as gassing, tinting and bleaching, and generally observed and maintained said prices, etc., and at times made arbitrary advances without respect to the raw cotton yarn market and cost of yarns to them;
- (b) Discussed general business and trade conditions and particularly costs of raw yarns, methods of stabilizing price of mercerized yarns and prices received therefor as disclosed in weekly reports to the association secretary and as reported by customers, and also such so-called trade abuses as price cutting and guarantee against decline in price; and
- (c) Collected weekly reports describing yarn sold by members during preceding week, and price received from domestic and export sales, through statistical bureau duly established by said secretary, and consolidated and disseminated information involved among members and presented same at the regular association meetings for study and discussion thereof;

With effect of substantially lessening, restricting and suppressing competition in sale of mercerized plied cotton yarns throughout the several States and particularly in prices and extra charges quoted and discounts allowed by members and with a tendency to enhance their prices above those theretofore prevailing and which would prevail under normal and open competition:

Held, That such practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Everett F. Haycraft for the Commission.

McKercher & Link, of New York City (with whom *Sizer, Chambliss & Sizer*, of Chattanooga, Tenn., for respondent National Yarn & Processing Co.), 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 Mercerizers Association of America, a voluntary unincorporated association of individuals, partnerships and corporations engaged in the manufacture, mercerizing and processing, including dyeing, tinting, bleaching and gassing of plied cotton yarns, and in the sale and distribution of the finished products to manufacturers of hosiery, underwear and other garments, and with business office in Washington, D. C.; and the officers, and members of respondent association, engaged, as above set forth¹; with combining or conspiring among themselves and with others to restrict, restrain and suppress competition in the sale and distribution of aforesaid products, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporations, ten in number, and, as alleged, with a dominant and preponderant position in the business concerned and but for the matters and things alleged, naturally and normally in competition with one another and in such competition with others similarly engaged, as charged, "on or about August 1, 1926, entered into an understanding, combination or conspiracy among themselves, and with and through said respondent association, and with others, to restrict, restrain and suppress competition in the sale and distribution of mercerized plied cotton yarns at wholesale to garment manufacturers throughout the United States by agreeing to fix uniform prices, terms and discounts and extra charges for gassing, bleaching, and tinting at which said yarns are sold; and by cooperating with each other in the enforcement and maintenance of such fixed prices, terms, discounts and charges by exchanging information as to prices and charges received for said yarn.

"Pursuant to and in carrying out said understanding, combination or conspiracy, each and all of the said respondent corporations cooperating together and with and through said respondent association, or otherwise, have performed and still continue to perform, among others, the following acts and things":

(a) Adopted and fixed uniform prices, at meetings attended by their representatives in July and August, 1926, "at which they would quote and sell mercerized plied cotton yarns to their customers; also standard terms and discounts to be observed in selling said products; also standard charges for extra processing such as gassing, tinting and bleaching, which said prices, terms, discounts and extra

¹ Set forth in par. 1 of findings, *infra*, p. 4.

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charges have been generally observed and maintained by said corporations since that date so that the prices quoted and charged and the terms and discounts allowed customers for their products by said respondent corporations at any and all times since August, 1926, have been substantially uniform and said prices have at times been arbitrarily advanced without respect to the cotton market and the cost of the raw yarns to the said respondent corporations."

(b) Held meetings attended by their representatives, under the auspices of the respondent association, and otherwise, and beginning in June, 1926, and "discussed general business and trade conditions including particularly costs of raw yarns, methods of stabilizing the price of mercerized cotton yarns and the prices which they had received for said yarns as disclosed in weekly reports submitted by said respondent corporations to the secretary of said respondent association; and also at such meetings have discussed so-called trade abuses such as price cutting and false reports from customers as to current prices."

(c) Organized respondent association at a meeting held by them in July, 1926, and in the subsequent month elected respondent Charles R. White, secretary thereof, said respondent White pursuant to authority conferred upon him by respondent corporations and association establishing "a statistical bureau which collected from respondent corporations weekly reports showing the quantity of the yarn sold during the preceding week, a description thereof and the price received from domestic and export sales, said information being consolidated and disseminated by the said Charles R. White to the said respondent corporations each week and presented by him at the regular meetings of said respondent corporations under the auspices of the said respondent association for study and discussion."

The result, as alleged, "of the acts and conduct of the said respondent corporations and the said respondent association, its officers and members, has been and now is to substantially lessen, restrict, and suppress competition in the sale of mercerized plied cotton yarns throughout the several States, particularly in the prices and extra charges quoted and discounts allowed by said respondent corporation; and to enhance the prices of said commodities above the prices which had theretofore prevailed and which would prevail under normal, natural and open competition," and such acts and practices of respondents, as charged, are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission, on the 5th day of February, 1930, issued its complaint against the respondents in which complaint it was charged that said respondents were and had been using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance on the 15th day of April, 1930, and made answer in writing and being desirous of expediting the hearing of said complaint and avoiding the expense incident to the taking of further testimony, entered into a stipulation as to the facts to be taken in lieu of testimony in support of the charges stated in the complaint or in opposition thereto.

Hereupon this proceeding came on for decision, respondents having waived the right to file briefs or present oral argument, and the Commission having considered the record and being advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Mercerizers Association of America, hereinafter referred to as the respondent association, is a voluntary unincorporated association of individuals, partnerships and corporations engaged in the business of manufacturing, mercerizing and processing, including dyeing, tinting, bleaching and gassing of plied cotton yarns, and in the sale and distribution of their finished products, generally known as mercerized plied cotton yarns, to manufacturers of hosiery, underwear and other garments, causing said products when so sold to be shipped from their respective mills and places of business to the purchasers thereof located in other States of the United States and in foreign countries, said respondents being banded together in said association for the purpose of promoting and protecting their common interests and business affairs. The business office of said respondent association is located at 1410 G Street, Washington, D. C., and its officers were at all times herein mentioned:

J. S. VERLENDEN, *president*.

ARTHUR DIXON, *vice president*.

CHARLES R. WHITE, *secretary-treasurer*.

Respondent Aberfoyle Manufacturing Co. is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Chester in said

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State, but with branch offices located in the city of Chicago, Ill., Reading, Pa., and Charlotte, N. C., and executive offices in the city of Philadelphia, State of Pennsylvania. It is engaged in the business of manufacturing, processing and mercerizing of cotton yarns and other cotton goods and in the sale and distribution of its finished products to garment manufacturers located throughout the several States, said sales being secured through traveling salesmen who travel throughout the country and through the brokerage house of C. D. Gott, Chattanooga, Tenn.

Respondent American Yarn & Processing Co. is a corporation organized under the laws of the State of North Carolina with its main office and mill located at Mount Holly, in said State. It is engaged in the business of manufacturing, processing and mercerizing of cotton yarns, and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Respondent Belmont Processing Co. is a corporation organized under the laws of the State of North Carolina with its main office and mill located at Belmont, in said State. It was, prior to August 1, 1927, engaged in the business of manufacturing, processing and mercerizing cotton yarn and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through salesmen and brokers.

Respondent Dixie Mercerizing Co. is a corporation organized under the laws of the State of Tennessee with its principal office and place of business located in the city of Chattanooga, in said State. It is engaged in the business of manufacturing, processing and mercerizing cotton yarn and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through salesmen and brokers.

Respondent Johnston Mills Co. is a corporation organized under the laws of the State of North Carolina with its principal office and place of business located in the city of Charlotte in said State. It is engaged in the business of selling mercerized cotton yarn manufactured by the said respondent Spinners Processing Co. and in such capacity sells and distributes said products to garment manufacturers located throughout the several States through agents and traveling salesmen who call upon the trade, causing said products when so sold to be transported from their place of manufacture at Spindale, N. C., to the purchasers thereof located in other States.

Respondent National Yarn & Processing Co. of Tennessee was, prior to February 2, 1929, a corporation organized under the laws of the State of Tennessee with principal office and place of business located in the city of Chattanooga in said State. It was then en-

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gaged in the manufacture, processing, and mercerizing of cotton yarns and in the sale and distribution of the finished products to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Respondent Spinners Processing Co. is a corporation organized under the laws of the State of North Carolina with its principal office and mill located at Spindale in said State. It is engaged in the business of manufacturing, processing and mercerizing cotton yarns and in the sale of the finished product to garment manufacturers located throughout the several States through its exclusive selling agent, respondent Johnston Mills Co. of Charlotte, N. C.

Respondent Clarence L. Meyers, Inc., is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia in said State. It is engaged in the manufacture, processing and mercerizing of cotton yarns and in the sale and distribution of the finished product to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Respondent Standard Coosa-Thatcher Co. is a corporation organized under the laws of the State of Tennessee with its principal office and place of business located in the city of Philadelphia in the State of Pennsylvania. It is engaged in the manufacture, processing, and mercerizing of cotton yarns and in the sale and distribution of finished products to garment manufacturers located throughout the several States, the sales being made through traveling salesmen and brokers.

Said respondent corporations are members of the said respondent association, and in the course and conduct of their several businesses as described herein, have the aggregate capacity of approximately 1,200,000 pounds of yarn per week and occupy a dominant and preponderant position in the business of mercerizing and processing of plied cotton yarns in the United States annually, and but for the matters and things hereinafter alleged and set out would naturally and normally be in competition with each other in price and otherwise, and are in such competition with other individuals, partnerships and corporations, which are not members of the said respondent association, engaged in the business of manufacturing, processing and mercerizing of cotton yarns and in the sale and distribution of said yarns in interstate commerce.

PAR. 2. Said respondent corporations named in the caption and described in paragraph 1 hereof on or about August 1, 1926, entered into an understanding, combination or conspiracy among themselves, and with and through said respondent association, to restrict, restrain and suppress competition in the sale and distribution of

mercerized plied cotton yarns at wholesale to garment manufacturers located throughout the United States by agreeing to fix and maintain uniform prices, terms, and discounts and extra charges for gassing, bleaching, and tinting at which said yarns are sold; and by cooperating with each other in the enforcement and maintenance of such fixed prices, terms, discounts and charges by exchanging information as to prices and charges received for said yarns. Pursuant to and in carrying out said understanding, combination or conspiracy, each and all of the said respondent corporations cooperating together and with and through said respondent association, have performed the following acts:

(a) Said respondent corporations at meetings held under auspices of said respondent association in July, August, and October, 1926, and thereafter from time to time at meetings attended by representatives of said corporations not under auspices of said respondent association adopted and fixed uniform prices at which they would quote and sell mercerized plied cotton yarns to their customers; also on August 19, 1926, at meeting of respondent association adopted uniform terms and discounts to be observed in selling said products and uniform charges for extra processing such as gassing, tinting and bleaching, which said prices, terms, discounts and extra charges, pursuant to said agreement, have been generally observed and maintained by said corporations until on or about August 1, 1929, at which time said respondent corporations began to disregard said fixed uniform prices, terms, discounts and charges in the sale of their said products, selling at whatever prices, terms and discounts they could obtain in competition with each other and mercerizers who were not members of the respondent association; so that the prices quoted and the charges, terms and discounts allowed customers for their products by said respondent corporations since August 1, 1926, until on or about August 1, 1929, have been substantially uniform, and said prices have at times during that period been arbitrarily advanced without respect to the raw cotton yarn market and the cost of the raw yarns to the said respondent corporations. Since on or about August 1, 1929, the prices quoted and the charges, terms and discounts allowed customers for their products by said respondent corporations have substantially varied. On March 7, 1927, the respondent association by formal resolution abolished and abandoned the rule and agreement relating to charges for gassing, tinting and bleaching adopted on August 19, 1926.

(b) Beginning in July, 1926, and periodically thereafter, respondent corporations at their said meetings which were attended by representatives of said corporations under the auspices of said re-

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spondent association, and otherwise, have discussed general business and trade conditions including particularly costs of raw yarns, methods of stabilizing the price of mercerized cotton yarns and the prices which they had received for said yarns as disclosed in weekly reports submitted by said respondent corporations to the secretary of said respondent association; and as reported to them by customers; and also at such meetings have discussed so-called trade abuses such as price cutting, and guaranteeing against decline in prices.

(c) At a meeting of said respondent corporations held on or about July 22, 1926, said respondent association was organized and at a meeting held on or about August 5, 1926, said respondent, Charles R. White, was elected secretary, with offices to be maintained in the City of Washington, District of Columbia; and pursuant to authority given the said Charles R. White at that time by the said respondent corporations and respondent association, said respondent Charles R. White established a statistical bureau which collected from respondent corporations weekly reports showing the quality of the yarn sold during the preceding week, a description thereof and the price received from domestic and export sales, said information being consolidated and disseminated by the said Charles R. White to the said respondent corporations each week and presented by him at the regular meetings of said respondent corporations under the auspices of the said respondent association for study and discussion.

PAR. 3. The result of the acts and conduct of the said respondent corporations and the said respondent association, its officers and members, as set out in paragraph 2 hereof, has been at various times until on or about August 1, 1929, to substantially lessen, restrict and suppress competition in the sale of mercerized plied cotton yarns throughout the several States, particularly in the prices and extra charges quoted and discounts allowed by said respondent corporation; and tended to enhance the prices of said commodities above the prices which have theretofore prevailed and which would prevail under normal and open competition.

CONCLUSION

The acts and practices of respondents as set forth in the foregoing findings as to the facts are all to the prejudice of the public and competitors of the respondents, and under the circumstances therein stated, are 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."

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 respondents, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent corporations, Aberfoyle Manufacturing Co., American Yarn & Processing Co., Belmont Processing Co., Dixie Mercerizing Co., Johnston Mills Co., National Yarn & Processing Co. of Tennessee, Spinners Processing Co., Clarence L. Meyers, Inc., and Standard Coosa-Thatcher Co., their representatives, agents, servants, employees, and successors, in connection with the sale of mercerized plied cotton yarns in interstate commerce, shall forthwith cease and desist from agreeing among themselves or with each other in any way to fix uniform prices, terms and discounts at which said yarns are sold and uniform extra charges for gassing, bleaching and tinting, and cooperating with each other in the enforcement and maintenance of such fixed prices, terms, discounts and charges, and said respondent corporations particularly shall cease and desist from performing the following acts:

(a) Adopting and fixing or agreeing to adopt and fix uniform prices at which they will quote and sell mercerized plied cotton yarns to their customers, also adopting and fixing or agreeing to adopt and fix standard terms and discounts to be observed in selling said products, also adopting and fixing or agreeing to adopt and fix uniform charges for extra processing such as gassing, tinting and bleaching, either at meetings attended by representatives of such corporations under the auspices of the respondent association or otherwise; and also observing and maintaining or agreeing to observe and maintain said uniform prices, uniform terms, discounts and extra charges.

(b) Discussing through representatives at meetings held under the auspices of the respondent association, or otherwise, methods of stabilizing the price of mercerized plied cotton yarns, the prices which they had received for said yarns, as disclosed in weekly reports submitted by them to the secretary of said respondent association, or the consolidated report submitted by the said secretary to the members of said association, or as reported to them by customers, and also so-called trade abuses such as price cutting or guaranteeing against decline in prices, for the purpose, or with the effect of promoting or maintaining said uniform prices, terms, discounts or charges or

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otherwise unreasonably restraining competition among themselves in interstate commerce.

And it is further ordered, That the respondent Mercerizers Association of America, and its officers and representatives, agents, servants, and employees, forthwith cease and desist from cooperating with the said respondent corporations in any of the activities forbidden by this order as set forth in the foregoing paragraphs.

And it is further ordered, That the respondents, Mercerizers Association of America, its officers and members, Aberfoyle Manufacturing Co., American Yarn & Processing Co., Belmont Processing Co., Dixie Mercerizing Co., Johnston Mills Co., National Yarn & Processing Co., of Tennessee, Spinners Processing Co., Clarence L. Meyers, Inc., and Standard Coosa-Thatcher Co., shall, within 60 days from service upon them of a copy of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order by this Commission herein set forth.

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IN THE MATTER OF

LOUIS A. TUVIN AND CARL BYOIR, PARTNERS TRADING AS COLLOIDAL CHEMISTS

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

Docket 1691. Complaint, Aug. 31, 1929. Order, Apr. 6, 1931

Consent order requiring respondents to desist from misrepresenting results of, and endorsements accorded, their pretended fat reducing preparation "Viaderma," as in said order set forth.

Mr. Edward L. Smith for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Louis A. Tuvin, and Carl Byoir, partners trading as Colloidal Chemists and hereinafter referred to as respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondents are a partnership located in the City of New York, trading under the name of Colloidal Chemists and engaged in the manufacture in New York City and in the sale between and among the various States and Territories of the United States and the District of Columbia of a certain preparation or compound, which they call Viaderma, and which they falsely claim and represent is useful and effective in dissolving and removing excess flesh from the human body. Respondents ship the said product when sold, to purchasers thereof located in various States other than the State of New York and located in the Territories of the United States and the District of Columbia. In the course and conduct of their business, respondents are in competition with other persons, partnerships and corporations engaged in offering for sale and in selling in interstate commerce, printed professional advice, books of information and instruction and other methods and means and certain remedies and appliances for dissolving or otherwise removing flesh from the human body.