

Syllabus

IN THE MATTER OF
LONG-BELL LUMBER COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1620. Complaint, May 23, 1929—Decision, June 8, 1931*

Where a corporation engaged in the manufacture and sale of lumber and timber products to customers in various sections of the United States, and in foreign countries, sold under the name "California white pine" products produced from the "Pinus ponderosa", and so advertised and described the same in trade journals, and other media of national circulation, and in other forms of advertising, circular letters, correspondence, and on letterheads, billheads, and invoices, and orally through its sales force, notwithstanding the fact that the tree belonged in the yellow pine, and not in the white pine, group as long established and recognized by botanists, wood technologists, foresters, and the public generally, and the wood therefrom, though frequently closely resembling true white pine in several of its immediately obvious qualities, and in several of its utilities, did not have those qualities of durability upon exposure, ease of working, ability to stay in place, uniformity, lightness, proportion of heartwood content, ability to retain paint, and others, which under the name "white pine" had come to be associated by the consuming public with the "Pinus strobus" or genuine northern white pine through a national and colonial experience of more than 200 years, and, more recently, with other species of the genuine white pine;

With result that a substantial number of retail dealers frequently sold said "ponderosa" lumber, purchased under such designations, upon orders for white pine, not knowing that the lumber so sold was not a true white pine nor wherein it differed therefrom, a substantial number of others, with knowledge of the important differences between the two, substituted said ponderosa, so trade named, for the higher priced, true white pine, the general public unknowingly frequently purchased ponderosa as and for true white pine and upon orders therefor, architects gave their approval to ponderosa products when true white pine and the qualities thereof were sought by buyer and architect, and such products were employed for uses for which less adapted than true white pine; and

With a tendency to bring about adoption of such ponderosa lumber for uses for which comparatively lacking in durability, and a lower public estimation of true white pine, and with effect of diverting trade from competitors selling true white pine products truthfully represented as such, and competitors selling ponderosa products under trade names neither including the phrase "white pine" nor otherwise deceptive or misleading, and of causing many retailers, architects, and consumers to buy said products as and for those of true white pine;

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

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Mr. Eugene W. Burr for the Commission.

Baker, Botts, Andrews & Wharton, of Kansas City, Mo., 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, a Missouri corporation engaged in the sale of logs and/or timber or lumber products and in the shipment of said timber or lumber or forest products to customers in other States in various sections of the United States, and in some instances in foreign countries, and with principal place of business in Weed, Siskiyou County, Calif., with misrepresenting product and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, names and designates in advertisements in trade journals and elsewhere, in circular letters, in correspondence with purchasers, and prospective purchasers and in invoices and orally through sales forces, as "white pine," with or without the prefix "California," "Arizona," "Western," or "New Mexico," a forest product produced from that species of tree native to the mountainous regions of the Pacific slope, commonly known as "western yellow pine," botanically known as *Pinus ponderosa*, marketed by manufacturers of the major part thereof in recent years as pondosa pine¹ and sold in competition with two species of genuine white pine, namely, *Pinus strobus*, the white pine native to the North Atlantic and Great Lake States, favorably known for its excellent qualities for over 250 years, and the *Pinus lambertiana*, native to the mountainous regions of the Pacific Coast States, commonly known throughout its range as sugar pine, and resembling in commercial qualities and characteristics the said *Pinus strobus* far more closely than the *Pinus ponderosa* or western yellow pine.

In so designating its products, respondent, and other manufacturers of said *Pinus ponderosa*, desire to distinguish the western

¹As set forth in the complaint, due to the confusion resulting from the designation by respondent and other manufacturers of the *Pinus ponderosa* as a white pine, "in or about the years 1924 and 1925 there was among various manufacturers of lumber an advocacy of, on the part of some, and an opposition on the part of others to, a proposal to change the trade name and designation of forest products made from *Pinus ponderosa* from 'white pine' or from the designations named * * * which include the words 'white pine,' to some other designation and particularly to 'pondosa' pine, and the said change to pondosa pine was actually made for all commercial purposes by manufacturers of the major part of the forest products made from *Pinus ponderosa*."

yellow pine, dealt in by them, from the longleaf yellow pine of the Southern States, commercially known as "southern yellow pine" (*Pinus palustris*), with its denser and more resinous characteristics, and inferiority, for certain uses, and, therefore, to avoid use of term "western yellow pine," and intend to secure for their products the market advantages of a name suggestive to the trade and public mind of the commercial species of genuine white pine, and particularly of the aforesaid more costly and favorably known, *Pinus strobus*, and cause the trade and buying public to minimize or ignore the characteristics wherein it said *Pinus ponderosa* is inferior to *Pinus strobus*.²

² The distinctive characteristics of the species of trees herein concerned both botanically and commercially, and facts pertaining to the history and sale thereof, are set forth in the complaint, as follows, in paragraphs 4 to 7, inclusive.

PARAGRAPH 4. There is a certain group of pine species known both popularly and botanically as "white" pines. They are species of the genus *Pinus*, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, soft wood in which the early and late formed portions of the annual rings or layers are not sharply defined, and have thin and nearly white sapwood. Another group of species of the genus *Pinus* is known both popularly and botanically as the "yellow pine" group, having certain botanical marks of distinction, and being characterized by rather hard, heavy wood, in which the early and late formed portions of the annual rings or layers are sharply defined.

PAR. 5. Among the species of pine belonging to the said described white-pine group is that botanically known as "*Pinus strobus*." It is a native to the upland regions of the North Atlantic Seaboard States and of the Great Lake States and other northern portions of the central valley of the United States. Since early colonial history, *Pinus strobus* has been known as a building wood, has proved its remarkable value during upwards of 250 years of general use, and has gained universal esteem under the common designation of "white pine." *Pinus strobus* is a genuine white pine and is the best known of the said white-pine group. The approximate present annual production and sale in the United States on the part of the manufacturers of forest products made from *Pinus strobus* is 825,000,000 feet b. m., and that of *Pinus ponderosa* 2,746,000,000 feet. Of the said annual production and sale of *Pinus ponderosa*, approximately an aggregate of 1,668,000,000 feet is now annually sold under the trade name and designation of "ponderosa" or "Ponderosa pine" and the remaining portion only, or approximately 1,078,000,000 feet, is sold as "white pine" either with or without one or another of the designations mentioned in paragraph 3 which include the said words "white pine." To persons not skilled in the identification and distinction of various species of forest products, it is at times difficult to distinguish between forest products made from *Pinus strobus* and those made from *Pinus ponderosa*.

PAR. 6. The wood of *Pinus strobus* is strongly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay and by its exceptionally high degree of uniformity of quality both locally and throughout its range and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said *Pinus strobus* excels *Pinus ponderosa*. The latter, while varying in its commercial characteristics in various portions of its range, among individual specimens within given localities, and also in many instances between heartwood and sapwood of individual specimens of the species, is botanically, by common designation, and by the average commercial qualities and characteristics of the species, a member of the aforesaid yellow-pine group. By reason of the said described comparative characteristics and excellence forest products made from the *Pinus strobus* have a general tendency in lumber markets to command and in general have commanded a higher average f. o. b. mill price than forest products made from *Pinus ponderosa*.

PAR. 7. There is a species of pine, native to the mountainous regions of the Pacific Coast States, designated botanically as *Pinus lambertiana*, known universally throughout its range under the common name "sugar pine." The products made from *Pinus lam-*

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The use of the words "white pine," as alleged, "whether or not coupled with any one of the said words in paragraph 3 hereof, named has the capacity and the direct tendency to result and has resulted in a widespread misconception of the comparative qualities, characteristics, commercial values, and even the identity of forest products made from *Pinus ponderosa* on the one hand and from species of genuine white pine on the other, and has actually confused the minds of many of the trade and of ultimate consumers and has misled and deceived them as to the actual and true comparative values of forest products made from the said species. The said use of the aforesaid words has the capacity and a direct tendency to produce and in many instances has produced numerous results unfair to competitors and to the public and, among other such, the results described as follows, to wit:

"(a) Spurious market equality in both the trade and public estimation in certain instances has been given to forest products made from *Pinus ponderosa* with those made from genuine white pines for uses wherein genuine white pines excel *Pinus ponderosa* as herein in paragraphs 6 and 7 set forth.

"(b) There has been brought about public doubt and misapprehension as to the respective qualities of forest products made from various species of pine native to the Pacific Coast and the uses which may most advantageously be made of them to the loss and detriment of the public and of competitors of respondents. The reputation and public esteem of forest products made from *Pinus lambertiana* have been seriously impaired as regards the qualities in which said *Pinus lambertiana* surpasses *Pinus ponderosa* as set forth in paragraphs 6 and 7 hereinabove. Many buyers and prospective buyers, as a result of the aforesaid misnaming of *Pinus ponderosa* as and for white pine and as a result of their ensuing experience therewith, have come to the mistaken and erroneous belief that none of the Pacific Coast species of pine possesses qualities equal to or approaching those described in paragraph 6 hereof as the qualities for which *Pinus strobus* has long been noted.

"(c) Jobbers and retailers in many instances have been and still are misled into buying *Pinus ponderosa* in the belief that they thus

bertiana are likewise known and sold widely as sugar-pine products, and are in competition with products made from *pinus ponderosa*. *Pinus lambertiana* is a genuine white pine. It is far more nearly related to the said *Pinus strobus* than *Pinus ponderosa* both botanically and in commercial qualities and characteristics, as set forth in paragraph 6 hereinabove. It equals *Pinus strobus* in its average rating in the said described characteristics. The approximate annual production and sale of *Pinus lambertiana* is 282,000,000 feet b. m.

* "New Mexico," "California," as prefixes.

secure a genuine white pine having the aforesaid qualities and characteristics thereof in the comparatively high degree described in paragraph 6, and have been and are thus induced to buy forest products made from *Pinus ponderosa* for resale for purposes to which they are as an average comparatively ill adapted.

“(d) Such retailers as have known the distinction between forest products made from *Pinus ponderosa* and those made from genuine white pines, but who have desired to gain by substitution of *Pinus ponderosa* for genuine white pine products in their sales to customers, have been enabled to mislead and have been aided in misleading their customers into the belief that *Pinus ponderosa* was a genuine white pine with the same excellent qualities possessed by genuine white pines and in the same high degree, as in paragraphs 6 and 7 set forth, and have filled orders for genuine white pine with *ponderosa* pine.

“(e) Such retailers as have been in ignorance of the distinction in qualities and characteristics between *Pinus ponderosa* and genuine white pines have been caused to sell to the public forest products made from *Pinus ponderosa* as and for genuine white pine to consumers desiring the qualities of lumber made from genuine white pine.

“(f) Retail dealers having stocked their yards with *Pinus ponderosa* purchased and to be sold by them as and for genuine white pine in various instances have not desired and do not desire to stock their yards with forest products made from said genuine white pine, thus depriving manufacturers of genuine white pine products of numerous market outlets.

“(g) Numerous builders, contractors, architects, and ultimate consumers have been and are misled into the advocacy, recommendation, adoption, and use of *Pinus ponderosa* in the belief that it is genuine white pine and has the aforesaid high degree of said described qualities.

“(h) Respondents and other manufacturers by misnaming and misdescribing *Pinus ponderosa* as a genuine white pine have been enabled on numerous occasions and now are enabled to secure a higher price for their said forest products than they could secure therefor in competition with genuine white pine products if a true name and designation of their said products were used; and have been enabled to fill and have actually filled orders for genuine white pine with consignments of *ponderosa* pine.

“(i) Manufacturers of forest products made from said genuine white pine, frequently through the ignorance of the buyer or of the public as to the commercial qualities distinguishing genuine

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white pine from *Pinus ponderosa*, are unable to sell their said products to customers at a higher price than customers will pay for forest products made from *Pinus ponderosa* when the latter are misnamed and misdescribed as white pine.

“(j) The average f. o. b. mill cost of forest products made from said genuine species of white pine exceeds the average f. o. b. mill cost of forest products made from *Pinus ponderosa* and the said misdescription of *Pinus ponderosa* as white pine has a direct tendency to cause and has at times caused manufacturers of genuine white pine products to lose sales and has at times caused them to make sales at or below actual cost of production and distribution.

“(k) Manufacturers of forest products made from *Pinus ponderosa* who describe their products as *pondosa* pine, as hereinabove in paragraph 8 described, are at a sales disadvantage as contrasted with such competitors, respondents and others, as misname and misdescribe their products, likewise made from *Pinus ponderosa*, as white pine, and who wrongfully imply and at times declare that their products possess the aforesaid superior commercial qualities for various uses that are possessed by genuine white pine.

“(l) The employment of *Pinus ponderosa* in lieu of genuine white pine by builders, contractors, architects, and the general public for uses wherein it is exposed to decay, and for which genuine white pine, by virtue of its aforesaid greater durability was and is preferred and desired in contrast with *Pinus ponderosa*, has conduced to and resulted in and still conduces to and results in the waste of forest products through the necessity to replace *Pinus ponderosa* more frequently than replacements would be or would have been necessary had white pine been used in the first instance.

“Aforesaid practices and methods of competition,” as charged, “engaged in by respondents, as hereinabove set forth, have the capacity and a direct, substantial and dangerous tendency to mislead and deceive the trade and public with regard to the identity and the comparative qualities and values of said above described forest products and have actually so misled and deceived in such regard. The said practices and methods of competition of respondents are against the public interest and constitute unfair methods of competition in commerce between the States and with foreign nations in violation of section 5.”

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 (38 Stat. 717), the Federal

Trade Commission on May 23, 1929, issued and served a complaint upon the respondent above named charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The complaint herein is one of a group of 50 complaints (Dockets 1620 to 1669, both inclusive) issued by the Commission against corporations, partnerships, and individuals charging the use of one or more trade terms inclusive of the phrase "white pine" to designate lumber, logs, and other forest products, manufactured and sold in interstate commerce from the pine species hereinafter described, known as *Pinus ponderosa*.

Respondent appeared and filed an answer. Thereafter this group of 50 cases, by mutual consent, in the interest of economy and for the avoidance of a multiplicity of hearings, was tried as a consolidated proceeding. Hearings were had and evidence was introduced both in support of the complaints and in defense before an examiner of the Federal Trade Commission, duly appointed, beginning October 4, 1929, at Boston, continuing at New York, Detroit, Indianapolis, Chicago, Madison, Wis., Spokane, Portland, Oreg., San Francisco, Albuquerque, N. Mex., and Flagstaff, Ariz., and closing at Chicago on February 20, 1930. All of the evidence was recorded, duly certified and transmitted to the Commission.

Thereafter, this proceeding came on for final hearing and the Commission having duly considered the pleadings and all the evidence taken herein and the record herein and being fully advised in the premises, makes this its report, stating its finding as to the facts and its conclusion drawn therefrom:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is incorporated under the laws of the State of Missouri and has its principal place of business in Kansas City, Mo.

I. RESPONDENT USES NOMENCLATURE WHICH INCLUDES THE PHRASE "WHITE PINE" FOR ITS *PINUS PONDEROSA* PRODUCTS IN INTERSTATE TRADE

PAR. 2. The respondent is incorporated under the laws of the lumber and timber products and ships said products from the State of manufacture to customers located in other States in various sections of the United States and in some instances located in various foreign countries. In causing its said products to be sold and transported from one State to another and from this country to foreign countries, respondent is in competition with other corporations, partnerships, and individuals producing forest products and selling and transporting the same from one State of the United States to another and to certain foreign countries.

PAR. 3. Respondent in the course and conduct of its business, as described in paragraph 2 hereof, for more than five years last past, has manufactured and sold, and now manufactures and sells, among other products, forest products produced from that certain species of tree botanically designated "*Pinus ponderosa*" under the name of "California white pine"; and during said period of time respondent, in advertisements inserted in trade journals and other media of national circulation, together with other forms of advertising, circular letters, correspondence with purchasers and prospective purchasers thereof and on letterheads, billheads, and invoices and orally through its sales forces, has designated and described such forest products made from *Pinus ponderosa* as California white pine.

II. GROUPING OF PINE SPECIES

PAR. 4. Pine trees, the genus *Pinus*, have for a long period been divided by botanists, wood technologists, foresters, and the public generally into two groups, namely the "white pine" and the "yellow pine" groups.

PAR. 5. In the classification of conifers including the pines, in so far as it is of purely botanical character, the number and grouping of needles, the nature of the cones, and the character of the bark are the primary considerations. The qualities and uses of the lumber produced by the trees classified are not considered for such botanical classification and the botanical classification of species of trees into a

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given genus does not always bring together a group of species producing lumber of closely related qualities and uses. After the above mentioned botanical and practical grouping of the pines had been made, a microscopic study and classification of the cellular structure of the pines revealed that pine species belong to two distinct groups as regards their cell structure and that the division on microscopic bases is identical with the botanical and practical classification into the "white pine" and the "yellow pine" groups.

PAR. 6. The microscopic distinction in cell structure between the members of the white pine group on the one hand and the members of the yellow pine group on the other, bears no known casual relation to the practical qualities of the lumber produced by the various pine species. The utilities of lumber have been learned by experience.

PAR. 7. Experts are able to determine microscopically whether a fragment of wood came from one of the white pines or from a yellow pine. They are not able thus to ascertain whether a given piece of white pine lumber was taken from a tree of one or another species of white pine and conversely they can not be sure of the species of any given piece of yellow pine. In large quantities experts and experienced lumbermen would in most instances be able to state with fair degree of certainty by what species of pine the lumber was produced. In the forest there is generally no uncertainty in distinguishing the species by differences in the bark and in the cones and by the presence of five needles in each bundle in white pines—the yellow pines having a less number.

III. CHARACTERISTICS OF THE WHITE PINE GROUP

PAR. 8. The white pine group includes, by common consent, the following commercial species of interest herein:

(a) The Northern white pine, known also by various other trade names, all of which include the phrase "white pine," botanically known as *Pinus strobus*;

(b) Sugar pine, botanically known as *Pinus lambertiana*; and

(c) Idaho white pine, known botanically as *Pinus monticola*.

These are the leading commercial species. The word "white" as part of the common name given to the members of the white pine group is not in origin descriptive of the outward appearance of these trees in the forest but of the lumber made therefrom.

PAR. 9. The white pine group has (a) a high degree of uniformity of lumber qualities as a group and is (b) preeminent for its high average of the following lumber characteristics:

Durability under exposure to weather and to other conditions of moisture, a great proportion of heartwood content as contrasted

with sapwood content, lightness of color, lightness in weight, softness and evenness of texture, closeness and fineness of grain, freedom from resinous content, from shrinkage, "checking" (i. e., the forming of minute fissures in the grain of the wood) and warping. Consequently the white pines have great ability to stay in place, exceptional ease of working and exceptional ability to hold nails without splitting when driven close to the end or edge of any given piece of lumber, and also to receive and retain paint.

IV. CHARACTERISTICS OF THE YELLOW PINE GROUP

PAR. 10. The species of the yellow pine group are in general and as an average far harder, heavier, stronger, more subject to shrinkage and warping, darker in color, more resinous, denser in fibre and coarser and more difficult to work than any of the members of the white pine group. The typical species of the yellow pine group are valuable for purposes where structural strength of timber is required whereas the species of the white pine group are not adapted to heavy construction.

PAR. 11. In contrast with the white pines the yellow pines vary widely. The most typical and commercially important of the latter is the long-leaf yellow pine (*Pinus palustris*) of the Southern States. From this species, the hardest of the group, the yellow pines vary to *Pinus ponderosa* which produces the softest lumber of any of the group. The characteristics of *Pinus ponderosa* lumber are set forth in Section X below. The typical yellow pines of the South do not produce lumber in "shop" grades (see par. 49) to any marked extent.

V. NORTHERN WHITE PINE

PAR. 12. The white pine known over far the longest period and most widely is *Pinus strobus*. It is native to the Northeastern States and westward to the Great Lake region including Minnesota, together with great sections of the eastern Canadian provinces. Its range extends also along the Appalachian highlands into the Southeastern States.

PAR. 13. This lumber is often referred to merely as "White pine." Of its other names the commonest is "Northern white pine." It is also given various designations including "New England white pine," "Maine white pine," "Michigan white pine," "Michigan cork pine," "Wisconsin white pine," "Minnesota white pine," "Canadian white pine," "New Brunswick white pine," among others.

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Present production

PAR. 14. American production of white pine was formerly immense. As the virgin stands of the species became depleted in eastern sections, supplies from further north and west came into use and additional virgin stands were from time to time depleted.

PAR. 15. While some virgin Northern white pine remains in New York State and elsewhere, there remain only small areas in the United States outside of Minnesota. In the latter State the virgin stands are still extensive and of high quality.

History

PAR. 16. White pine lumber was the almost universal building material of the settlers of New England from the earliest days. From this section, moreover, it was marketed throughout the country as settlement developed and became and remained for generations the leading soft wood of the country. Many ancient buildings constructed from this lumber, 1636 to 1780, are still in use and are in a high state of preservation. Among these are certain famous buildings including Christ Church in Cambridge, the Longfellow house, the James Russell Lowell house, the Fairbanks house, among others. In numerous cases the original shingles or clapboarding are still exposed to the New England climate. In certain instances the white pine lumber was not protected by paint and is still in a good state of preservation.

Qualities and reputation

PAR. 17. White pine lumber from adult growth possesses precisely the qualities enumerated, as characteristics of the white pine group, in paragraph 9 hereof. It has long held and still holds an exalted reputation among the consuming public for the said enumerated qualities and in general esteem is the highest type of lumber as respects the excellences desired in softwood materials. These views of white pine are widely shared by the consumers, builders, dealers, architects, millwork manufacturers, and professional foresters and technologists. This species is coming more and more to be a specialty wood, largely devoted to special purposes, as it becomes scarcer and higher in price. It is in great demand.

Commercial future of the species

PAR. 18. The importance of white pine is enhanced by reforestation efforts by the National Government, State governments and by private persons. Great areas have been planted in many parts of the country.

VI. MEANING ATTACHED TO "WHITE PINE" BY THE PUBLIC

PAR. 19. As a result primarily of the aforesaid high qualities and reputation, the long continued and the widespread use of white pine lumber under numerous trade names, above mentioned, which include the phrase "white pine," the public long ago came to associate and still associates with the phrase "white pine" the said qualities above in paragraph 9 described.

VII. SUGAR PINE

PAR. 20. Sugar pine (*Pinus lambertiana*), the second species of the commercial white pines (supra par. 8), is native to upland regions of California, southern Oregon, and small parts of Nevada.

PAR. 21. The lumber of this species has uniformly been sold as "sugar pine." Its producers advertise it, and otherwise promote its sale, as a genuine white pine, with the qualities of true white pines. It has been in the market of the country widely for about 30 years and has an annual production of about 280,000,000 feet.

PAR. 22. Sugar pine lumber is preponderantly a heartwood and has in high degree the qualities typical of the true white pines outlined in paragraph 9 hereof. This species is closely akin as a tree and as lumber to white pine.

PAR. 23. Sugar pine has a high reputation for durability, particularly when exposed to the weather or to other processes of wetting and drying and in actual use has endured exposure for long periods. Original lumber made from sugar pine is still in place where exposed to the weather and is in good condition after many years used in numerous instances. This is true occasionally even where the wood has been left unpainted. This species is highly valued for exterior uses. Sugar pine is the most largely used and most highly valued of any species for industrial patterns on account of its exceptionally high degree of softness, uniformity of texture, the large dimensions in which it is obtainable, its freedom from warping, checking, and shrinkage and its consequent exceptional ability to stay in form. For similar reasons it is highly valued for interior woodwork of pianos and organs. There is a tendency for sugar pine to become a specialty wood.

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VIII. IDAHO WHITE PINE

PAR. 24. Idaho white pine (*Pinus monticola*), the third species of commercial white pines, is indigenous to the mountainous sections of northern Idaho, Washington, and Oregon, western Montana and portions of British Columbia. Northern white pine and Idaho white pine resemble one another closely.

PAR. 25. Lumber cut from this species is characterized by the qualities of the true white pine described in paragraph 9 hereof. Idaho white pine has come into general use only within about 20 years; it has shown excellent durability under weather exposure. It has an excellent reputation for durability, and is recognized as a true white pine.

IX. *PINUS PONDEROSA*

PAR. 26. Having described the commercial species of true white pine, we turn now to *Pinus ponderosa*, the lumber designated by respondent and numerous other producers by names which include the phrase "white pine." The term "ponderosa" is not used in the trade but is employed herein for convenience. Ponderosa is fully recognized as belonging, both by botanical classification and its cellular character to the yellow pine group.

PAR. 27. This species has a range extending over a wide area from British Columbia to the northern states of Mexico and from the Pacific Coast States to the mountainous sections of Montana, Colorado, and New Mexico. Ponderosa averages a larger growth than Northern white pine or Idaho white pine but is smaller than the Sugar pine. This tree is readily distinguishable from true white pines by its bark, cones, and the number of its needles to each sheath. It is given the designation "Western yellow pine" by the United States Forest Service. It is generally known by the residents of its home regions and by loggers merely as "yellow pine."

PAR. 28. The annual production of *Pinus ponderosa* is 2,800,000,000 feet, b. m., while that of true white pine is 1,600,000,000 feet.

Trade terms for ponderosa

PAR. 29. The lumber from this species has been given the names in controversy in the above described group of cases (see p. 2) by respondent and various other producers, to wit, California white pine, New Mexico white pine, and Arizona white pine. Ponderosa lumber, by many of the producers in the so-called "Inland Empire" (i. e., eastern Washington and Oregon, Idaho and Western Montana), was formerly given the name "Western white pine," which,

however, was abandoned by these producers (see *infra*, par. 33) and the term "Pondosa pine" adopted for their ponderosa products. The term "Western white pine" is now used only by a few producers in Arizona and New Mexico and as an alternate term only. The ponderosa producers using the terms in controversy, in contrast with the retailers, have almost always refrained from advertising, invoicing or selling this lumber as "white pine" without prefixing one or another of the said geographical terms. Occasionally, however, the term "white pine" has been used alone by the producers. Nor have these producers supported their designation of ponderosa products by terms which include the phrase "white pine" by express declarations to their customers that said products are true white pine.

Origin and extent of terms, which include "white pine," for ponderosa

PAR. 30. Ponderosa lumber came to be given terms which include the phrase "white pine" for local markets in California, New Mexico, and Arizona about 1880. By 1886 it was being generally marketed under terms including "white pine" in California, Nevada, and Utah points with occasional shipments further east. By about 1900 it was coming into middle western territories and about 1915 ponderosa completed its national distribution by entering New England in a limited way. (But see par. 74 *infra*.)

PAR. 31. But as ponderosa lumber gradually spread eastward it came into competition more and more with true white pine in markets long occupied by true white pine. Accordingly, ponderosa producers came to value the use of trade terms which include "white pine" for ponderosa products, and they now desire to continue such use, since these trade terms classify and associate ponderosa in the market with the true white pines and afford producers of ponderosa a substantial monetary sales advantage.

PAR. 32. Terms for ponderosa which include the phrase "white pine" are now in use by almost every producer from and including the Klamath section of southern Oregon, California, Nevada, Arizona, and New Mexico. In the last two named States, however, these terms were partially dropped before these proceedings began.

More than half of ponderosa output is no longer sold under "white pine" trade terms

PAR. 33. The ponderosa of the "Inland Empire" did not enter midwestern and eastern markets as early as the more southerly supplies. When it did it was under various terms of which western

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white pine was most employed (see *supra* par. 29). In 1924 the majority of "Inland Empire" producers of ponderosa adopted the name "Pondosa pine" and abandoned all other terms for this lumber. The same term is used by a very few California producers whose chief product is Sugar pine. Pondosa pine is the term employed for ponderosa by the representatives of the producers of slightly more than half of the ponderosa marketed. Certain Arizona and New Mexico producers use it as an alternative term. Pondosa pine is used for the same purposes as before the change of name, but whether in the same proportions the record does not reveal. It is used in general for the same purposes as such ponderosa as is marketed under terms which include the phrase "white pine" but not in the same proportions.

X. COMPARISON BETWEEN TRUE WHITE PINE AND PONDEROSA LUMBER

PAR. 34. The importance to the buyer of the confusion, hereinafter found, is due in large measure to certain differences between the lumber of the genuine white pines and that made from *Pinus ponderosa*. Report on those distinctions next ensues:

A. Variability of qualities

PAR. 35. The ponderosa species grows readily under an unusual variety of conditions of soil, drainage, temperature, latitude, altitude and of high precipitation or semiaridity. The true white pines are far more restricted and more exacting in their requirements in the foregoing respects. They do not thrive under conditions so widely varying.

PAR. 36. Correspondingly ponderosa has a high degree of variability in characteristics as lumber. Ponderosa products from different parts of California vary widely, some sections producing light colored wood of soft texture, while in other districts the product is far harder, darker, heavier, and denser. The ponderosa of the "Inland Empire" is a smaller tree as an average and produces lumber differing in some respects, including the average character of its knots. "Inland Empire" ponderosa also presents varied lumber characteristics. The higher elevations of Arizona and New Mexico produce soft, pale types of ponderosa, varying in color and texture from California types. These variations in ponderosa lumber are far greater than the variations in the species of true white pine.

PAR. 37. There are also greater variations in given individual localities in the same stand of ponderosa than in the corresponding stands of the genuine white pines.

PAR. 38. Moreover, in the same tree and in the same piece of lumber there are greater average variations in the softness, ease of working, appearance and color of ponderosa than in the case of true white pines. These latter variations are of two kinds: There is a greater variation in general between the spring and summer portions of the annual rings of ponderosa than in the white pines. The texture of the white pines is more uniformly smooth and relatively unbroken by differences in characteristics between the two portions of each annual ring, while in the case of the average ponderosa there is a greater hardness of the summer growth of the tree as contrasted with the spring growth.

PAR. 39. Further and more notably there is a greater difference in ponderosa than in the true white pines between the color, texture, density, weight, and resinous content of the heartwood and of the sapwood. As an average the heartwood of ponderosa is notably darker, heavier, and more resinous than either the sapwood of the same tree or the heartwood of genuine white pines.

PAR. 40. True white pine lumber is far more durable than ponderosa lumber, especially when exposed to weather conditions. The ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber. It has a far greater percentage of sapwood than the true white pines. The sapwood of the ponderosa is less durable than any other part of the tree—especially when exposed to weather conditions. It is the sapwood of the ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness. It is the sapwood of the ponderosa that is usually sold for uses and purposes for which the heartwood of the true white pines is celebrated. The close resemblance between the heartwood of the true white pines and the sapwood of the ponderosa above noted, is one of the greatest causes of the confusion and deception in the marketing of the two species.

PAR. 41. Accordingly, an order for ponderosa lumber may be correctly filled by material having a considerably greater diversity of characteristics than an order for true white pine. Furthermore, if orders for white pine (see par. 62) are interpreted by the dealer to permit the delivery, not only of true white pine, but also of ponderosa purchased by him under names which include the phrase "white pine" (see pars. 65-69), there is far more risk of the buyer receiving lumber either of characteristics differing from those desired or of

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characteristics widely varying within the consignment, than in the case of an order for white pine when interpreted so as to require true white pine exclusively.

B. Comparison of the so-called mechanical properties

PAR. 42. The findings as to mechanical properties made under above heading exclude the comparative variability of the lumber produced by the species in question, the respective proportions of their heartwood and sapwood content and the relative durability of the species compared. In mechanical properties, so restricted in meaning, ponderosa is found as an average to compare with the true white pine as follows:

PAR. 43. The genuine white pines distinctly excel ponderosa in freedom from shrinkage and checking (i. e., the formation of minute fissures). Checking is a partial cause of the warping and twisting of lumber and conduces to decay. It also promotes a more frequent failure of ponderosa lumber to stay in place.

PAR. 44. Genuine white pines as an average excel ponderosa in softness of texture, freedom from resinous content, in paleness of color and lightness of weight, ease of working and ability to hold nails close to the edge or end of the lumber. The white pines also as an average excel ponderosa as regards their ability to hold paint.

C. Comparative proportions of heartwood and sapwood

PAR. 45. Growing timber is divided into the heartwood and the sapwood portions, the heartwood of trees in general, including the four pine species hereinabove described, constituting that portion of the product which possesses the greater durability where exposed to weather conditions or in other ways to moisture.

PAR. 46. The proportion of heartwood has an important bearing here. The sapwood of none of the varieties here in question has a long life where exposed to conditions inducing decay. (But see par. 57.)

PAR. 47. Ponderosa has a far less proportion of heartwood than each of the true white pines.

Importance of the proportion of heartwood for remanufacturing purposes

PAR. 48. The difference between the proportions of the heartwood to the sapwood content in ponderosa and in the true white pines is important in the remanufacture of the lumber into millwork products and in the utility of the products.

PAR. 49. In sawing the tree into lumber the preliminary process is "slabbing." Thereby a far greater proportion of the sapwood content of the average true white pine log is removed than of the sapwood content of the average ponderosa log. The lumber thereafter first taken constitutes in high proportion what is sold as the "select" grades of lumber both in the white pines and in ponderosa. These grades consist to a substantially larger extent of heartwood in true white pines than in ponderosa. Proceeding further into the log more knotty portions are encountered. These are used as the "shop grades" for remanufacturing into both inside and outside finish. In true white pine these shop grades consist of heartwood to a much larger extent than is the case in ponderosa shop lumber.

PAR. 50. For this reason manufacturers of outside finish from true white pine can and some of them actually do so mill the lumber as to turn the sapwood portions toward the inside and to present a complete heartwood surface to the weather. This it is not possible to do with ponderosa shop lumber since the sapwood content is too great.

PAR. 51. Still further in the interior the great number of knots unfit the lumber for shop use and it is used as common lumber. In the common grades ponderosa and true white pine are sometimes sold together as pine common.

PAR. 52. The heartwood content constitutes the typical lumber of true white pine. But in ponderosa the heartwood content is much smaller in percentage, as an average, and is harder, heavier, darker, denser, and more resinous than the sapwood of ponderosa or either the heartwood or sapwood of true white pine. Accordingly, ponderosa heartwood is not as an average highly adapted in amount, appearance, and texture to compete with true white-pine lumber.

D. Comparative durability under weather exposure

PAR. 53. Climatic conditions of moisture, precipitation, and humidity have a direct effect upon the durability of exposed lumber. Other things being equal, the greater the exposure to moisture the greater tendency of any given species to decay.

PAR. 54. The reputation of ponderosa for durability, and its actual durability, in uses where exposed to the elements is far below that of the true white pines in general. Ponderosa is not sought by buyers for its durability for exterior uses. It is not recommended for such purposes by architects. While the U. S. Forest Service has conducted no investigations of the comparative durability of lumber which have resulted in dependable data, that bureau, in common with

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experts generally, deems ponderosa to have notably lower durability under weather exposure than true white pine. This is also asserted by practical lumbermen generally.

PAR. 55. Said low comparative standing of ponderosa as to durability results from experience with it in various parts of the country and the contrasting experience with the true white pines, and over the far longest period, with Northern white pine. Ponderosa has failed to endure in exterior uses under conditions of high precipitation and humidity in various sections east of the Mississippi River. It has become unserviceable through decay in about seven years in various cases. Prompt painting has not always prevented the decay of ponderosa.

PAR. 56. In some sections of California there are houses constructed of ponderosa of many years standing. Although still serviceable the exterior of these has rotted to considerable extent and the "shakes" have rotted badly. California users and architects prefer sugar pine to ponderosa for exterior use because experience has shown that sugar pine endures longer. In the arid regions of the southwest, ponderosa has a record of centuries of use in structures made by the Spanish and Mexican settlers, but even in that section the long life experienced as regards this lumber is where not exposed to the weather. Rotting has occurred in this section where there was weather exposure.

PAR. 57. Where sugar pine and ponderosa have been compared as to durability of standing dead timber, in stumps of cut timber and in dead and down logs, in the same localities and under similar conditions, the ponderosa has decayed and become wholly unmarketable after periods of one to four years, while sugar pine has endured for many years. A comparison of dams, each subject to daily depletion and replenishment of the supply of water, built of ponderosa and of sugar pine, respectively, showed a life of about two years in the case of the former material and about 39 years for the sugar pine. The sapwood of sugar pine outlasts the sapwood of ponderosa and the heartwood of the white pines outlasts that of ponderosa.

XI. UTILITIES OF PONDEROSA LUMBER

PAR. 58. Ponderosa lumber as an average resembles true white pine in appearance and general texture and it competes actively with true white pine in many markets and for many purposes for which true white pine has long been used.

PAR. 59. Ponderosa is excellent for many uses and has sold and continues to be sold in great quantities upon its merits. It has fine

characteristics as inside finish for which it is widely used on account of its lower market price. Another reason for preferring it over true white pine for interior use is that numerous architects, members of the trade and consumers desire the ponderosa type of grain. Ponderosa is distinctly inferior, however, to true white pine lumber, for reasons set forth hereinabove, for outside uses including exterior trim (paragraphs 53 to 57), and for numerous purposes requiring the acme of characteristics enumerated hereinabove in paragraphs 9 and 23. The true white pines do not supply enough of the shop grades to make all of the exterior millwork normally needed by the building trade.

**XII. EXTENT OF CONFUSION THROUGH THE USE OF TRADE TERMS INCLUDING
"WHITE PINE" FOR PONDEROSA**

A. Market conditions

PAR. 60. As the eastern stocks of virgin Northern white pine diminished, Michigan and Wisconsin white pines came into the market. As these stocks in turn diminished, Minnesota and Canadian white pines have come increasingly into the market. All of these were of the Northern white pine or strobus species. Idaho white pine and sugar pine also advanced with the recession of the supply of Northern white pine, entering the markets in a gradual eastern progress. The character and qualities of each of these species possess and, were presented to the trade and public as those of a true white pine. Ponderosa, under names which included the phrase "white pine," entered the same markets during the same general period.

PAR. 61. Throughout the competitive relations among the white pines and between them and ponderosa there has, with practical uniformity, existed a price differential in favor of each of the true white pines. The white pines have maintained and still maintain a higher price than ponderosa products.

PAR. 62. The character and reputation of true white pine as above set forth (pars. 9, 17, 19, 22, 23, 25) have led the general public, builders, architects, and the trade over a long period to call for and specify white pine, and this demand continues to the present time. The dealers, architects, and consuming public are influenced by the common names given to lumber products and not by the botanical names. They seldom know the Latin terms for the respective species although of late there has been a tendency on the part of certain architects to use strobus in their specifications of Northern white pine. Nor are these classes of buyers informed of or concerned over the purely botanical distinctions considered by scientists in the classi-

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fication of species. They buy by common names and are concerned over distinctions between the characteristics of the lumber of the various species.

PAR. 63. The general public associates certain qualities as above found (par. 19) with the term "white pine," but does not have sufficient knowledge of lumber species to be able to distinguish by appearance between the true white pines and ponderosa. Even experienced retailers can not always be certain as to whether lumber is ponderosa or true white pine, and architects, as a class, do not have the special technical knowledge required for them to distinguish between the two. This is true of the lighter and softer types of ponderosa and particularly of its sapwood lumber.

B. Extent of the resulting confusion to wholesalers and remanufacturers

PAR. 64. Some wholesale lumber merchants and millwork concerns are apprised of the fact that ponderosa products, in the market under terms which include the phrase "white pine," are not true white pine products, but they have little opportunity to inform themselves directly as to comparative durability.

C. Extent of resulting confusion to retail dealers

PAR. 65. Some retailers of lumber know the species and quality distinctions among these varieties of pine lumber, and of this number a portion make it their practice to deliver genuine white pine upon orders for white pine. The various terms which include the phrase "white pine" for ponderosa are thoroughly familiar to the retail trade as well as the appearance of the lumber they receive under said terms, but many retailers do not know whether ponderosa products sold under said terms are true white pine products or not. Some retailers believe them to be genuine white pine products. Ponderosa under names which include the phrase "white pine" is sold by many retailers upon orders for white pine. Numerous dealers in various parts of the country do not distinguish between ponderosa so named and true white pine lumber in their respective qualities and utilities. Many dealers sell ponderosa and the genuine white pines on orders for white pine according to the stocks they may chance to have on hand. The use of the phrase "white pine" as part of terms for ponderosa is confusing to and misleads a substantial portion of the retail lumber trade.

D. The use of the phrase "white pine" by distributors of ponderosa as an aid to dealers to mislead consumers

PAR. 66. The practice by retailers of selling ponderosa, when designated by a term which includes the phrase "white pine" on orders for white pine is not confined to dealers who do not know the distinctions of quality between ponderosa so named and true white pine. Dealers who know that white pine excels ponderosa in important respects frequently sell either product to fill orders for white pine according to their own interest or the exigencies of their yards.

PAR. 67. Some dealers who know that ponderosa products purchased under trade terms which include the phrase "white pine" are not genuine white pine prefer to stock their yards with such ponderosa as comes to them so named, rather than with ponderosa otherwise named, on account of the sales value which the word "white" so used possesses. Some retailers feel justified or safer in selling ponderosa products on orders for white pine on account of the inclusion of the phrase "white pine" in the term under which they purchase.

PAR. 68. When an order comes for white pine dealers sometimes make an effort to learn to what use the lumber is to be put and supply ponderosa, or true white pine, accordingly. Others make no such effort. Dealers, however, quite generally omit to pass to their customers the information that ponderosa is not a true white pine. Even ponderosa sold to the retailer under the trade term "pondosa pine" is sometimes sold to the consumer on orders for white pine. The latter sales are aided and made more frequent by the fact that pondosa lumber is cut from the same tree as ponderosa lumber sold under names which include white pine, and by the further fact that representatives of pondosa producers, meeting in competition the salesmen of ponderosa, offered under said names, urge that pondosa is as much entitled to be sold as white pine as ponderosa so named.

PAR. 69. There is a powerful motive for the retailer's substitution of ponderosa under terms which include "white pine" for true white pine in the lower cost of ponderosa and there is excellent opportunity afforded by the fact that architects and consumers can not ordinarily check the material furnished.

E. Extent of the resulting confusion to architects

PAR. 70. Architects desire for exterior uses lumber from such species as possess primarily the quality of durability; for interior

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purposes they desire such lumber as possesses the qualities of beauty. The members of the profession prize the qualities of true white pine, and particularly of Northern white pine, which has an exceedingly high reputation among them. Accordingly, architects for many years have specified white pine and are still so specifying, particularly for exterior use.

PAR. 71. The majority of architects desiring true white pine quality specify in terms, "white pine". Under such specification some architects would knowingly accept nothing but strobos; others would knowingly accept any genuine white pine; still others would accept Idaho white pine but not sugar pine.

PAR. 72. The majority of architects do not know whether ponderosa lumber when given names which include the phrase "white pine" is true white pine with true white-pine qualities or not, particularly as to durability. Nor do architects possess the knowledge necessary to apply the microscopic test between true white pines and yellow pines, nor do they have sufficient experience to accurately distinguish between true white pine and ponderosa, particularly in the softer and lighter products of the latter species. They unwittingly accept ponderosa on behalf of their clients when true white pine and its qualities are desired and when white pine is ordered. This is caused by the advertisement and use of names including white pine for ponderosa products.

F. Extent of the resulting confusion to the general public

PAR. 73. The qualities and reputation of the true white pines has led the consuming public to desire and order white pine for many years. This desire persists to the present time and retailers are constantly called upon to furnish white pine. Consumers, however, have less training and opportunity than architects for distinguishing by appearance ponderosa products from true white pine.

PAR. 74. Consumers are constantly buying ponderosa pine under terms which include the phrase white pine when they order white pine and desire it for purposes for which true white pine excels ponderosa. Although ponderosa products have been sold under names which include the phrase white pine in certain markets outside of the regions of production for thirty years there is still almost complete confusion resulting in the mind of the consuming public as to the distinction between ponderosa products so named and true white-pine products. This confusion on the part of the consuming public is to be found even among a substantial proportion of California buyers in spite of the use of the term "California white pine" in local markets since about 1880.

XIII. EFFECT OF THE USE OF TERMS WHICH INCLUDE "WHITE PINE" FOR PONDEROSA PRODUCTS UPON COMPETITION

PAR. 75. The producers of ponderosa products marketed under trade terms which include the phrase "white pine" sell their said products to the wholesale and retail trades and to millwork manufacturers. In this trade they compete in selling to the same customers with producers of true white pine and also with producers of ponderosa who use the term "pondosa pine."

PAR. 76. The use of the phrase "white pine" in names for ponderosa products has a positive monetary advantage for the producers in marketing the product. This is due to the association with and the suggestion of true white pine by means of that phrase.

A. Upon true white pine competitors

PAR. 77. Manufacturers of true white pine have found it more difficult to dispose of their products in competition with the lower priced ponderosa sold under terms which include the phrase white pine. Retailers frequently desiring to purchase so-called white pine products at a low price, accept ponderosa sold under terms which include the phrase white pine for the reason that such lumber can be sold upon orders for white pine better than ponderosa products otherwise named. The retail customer buyers of true white pine products encounter a similar difficulty in competition with retailers selling lower priced ponderosa products under names which include white pine, and this affects their purchases of true white pine.

B. Upon "pondosa pine" competitors

PAR. 78. The manufacturers of ponderosa products who are using the trade term "pondosa pine" have also found it more difficult to dispose of their products in competition with ponderosa products sold under names which include the phrase white pine. This is due in material degree to the use of the phrase white pine in the trade term. Dealers frequently desire to buy lumber products sold under a trade term which includes the phrase white pine and yet can be marketed competitively at prices lower than the prices of true white pine.

PAR. 79. This results in the purchase by certain retailers of ponderosa products designated by terms which include white pine in preference to the competing ponderosa products designated pondosa. Salesmen of pondosa products try to protect themselves by pointing out that pondosa lumber is cut from precisely the same

species of tree as ponderosa lumber sold under terms which include the phrase white pine. Nevertheless, the preference remains for a product the trade name for which includes white pine. Certain retailers can not be convinced that ponderosa and California, etc., white pine products are made from the same species of tree. Others can be convinced but still prefer a product under a trade name which includes the phrase white pine because the latter sells more readily.

**XIV. THE RELATION OF THE USE OF TRADE TERMS WHICH INCLUDE THE PHRASE
"WHITE PINE" FOR PONDEROSA TO PUBLIC GOOD WILL**

PAR. 80. When dissatisfaction occurs from the use of ponderosa lumber delivered under orders for white pine there is a direct tendency towards the discrediting of white pine generally without public discrimination between true white pine and ponderosa products marketed under trade terms which include the phrase white pine. The tendency from the practice of selling true white pine and ponderosa products, all as "white" pines, is to lessen and destroy the especial public confidence in, and the public regard for the true white pines with respect to the important purposes for which true white pine lumber is especially fitted. Such tendency exists without at the same time availing to establish a well-defined and independent reputation and esteem in favor of ponderosa for the important uses to which it is peculiarly adapted. The tendency as to lessen the ability of each of these products to hold the market, as contrasted with lumber substitutes, to the best advantage. The result is further to promote public doubt and confusion as to identity, qualities and comparative excellences of the respective species for various important uses to the market detriment of each.

Summary and conclusions of fact

(a) Respondent is a corporation producing and marketing *Pinus ponderosa* products which it designates, nationally advertises and sells in trade between the States under a term including the phrase white pine.

(b) Certain pine species have long been known to botanists, lumber technologists and the public as the white pine group.

(c) The most widely known of the white pine group is the Northern white pine. The lumber made from this species has for more than 200 years held and still holds a preeminent reputation with the public for certain qualities. It has been widely known under many trade terms which include the phrase white pine.

(d) As a result of said high and long sustained reputation of the white pine group, the consuming public understands and has long understood by the phrase white pine as applied to lumber, not merely a white colored pine wood, but lumber made from a true white pine species and having the qualities and uses of Northern white pine.

(e) *Pinus ponderosa* does not belong either botanically or in public understanding to the white pine group. Its lumber, in certain important qualities and for certain important uses, is inferior to the white pine group.

(f) A substantial number of retail dealers frequently sell *ponderosa* lumber purchased by them under trade terms which include the phrase white pine, upon orders for white pine, not knowing that *ponderosa* so named is not a true white pine nor wherein it differs from the latter. Other retail dealers also substantial in number substitute *ponderosa* so trade-named for higher priced true white pine on such orders, knowing that the latter is not a true white pine and that it differs in certain important qualities therefrom. Both of the foregoing classes of sales are directly promoted by the circumstance that the *ponderosa* so sold is purchased by the dealer under trade terms which include the phrase white pine. And in making the latter class of sales dealers are partially protected by the trade names in question. Still other retailers sell only true white pine on orders for white pine.

(g) An inducement for the substituting of *ponderosa* so named on orders for white pine exists in the lower prices paid by the dealers for *ponderosa* lumber than for true white pine.

(h) The use of the phrase white pine as employed for *ponderosa* products frequently results in the purchase by the general public unknowingly of *ponderosa* under orders for white pine and as and for true white pine and results in the approval of *ponderosa* products unknowingly by architects, when true white pine and the qualities thereof are sought by the buyer and the architect. It results also in the employment of *ponderosa* products for uses for which it is less adapted than true white pine.

(i) Trade terms which include the phrase white pine have been used for about thirty years in marketing *ponderosa* products in districts beyond those of its production. But, so long as the public associates the phrase white pine with true white pines and the distinctive lumber qualities of these species, the use of the phrase in question for *ponderosa* products is inherently misleading and deceptive to the public.

(j) The said confusion is increased by the fact that *ponderosa* lumber frequently closely resembles that of the true white pines in

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several of its immediately obvious qualities and in several of its utilities.

(k) The employment of said phrase for ponderosa has a tendency toward the adoption of the latter lumber for uses for which it is comparatively lacking in durability.

(l) The employment of said phrase for ponderosa products has a tendency toward a lower public estimation of true white pine lumber.

(m) The use of trade terms which include the phrase white pine for ponderosa products by concerns marketing said products in interstate commerce has caused a diversion of trade from their competitors selling true white pine products and truthfully representing them to be true white pine.

(n) The use of trade terms which include the phrase white pine for ponderosa products by concerns marketing said products in interstate commerce has caused a diversion of trade from their competitors who sell ponderosa products under trade terms which do not include the said phrase and who do not give them a deceptive and misleading trade name.

(o) The use of trade terms which include white pine for ponderosa products has caused and still causes many retailers, architects, and consumers to buy ponderosa products when they have believed themselves and still believe themselves to be purchasing true white pine products.

CONCLUSION OF LAW

The acts and things done by respondent under the conditions and the circumstances described in the foregoing are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been submitted to the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the evidence received by the trial examiner for the Commission and the matter having been presented to the Commission through written and oral argument, by counsel for the Commission, respondent having elected not to present argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress

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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 Long-Bell Lumber Co., a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and/or sale, in commerce among the several States of the United States, or with foreign countries, of lumber, logs or other forest products made from the pine species known as *Pinus ponderosa*, which have been designated by respondent in its trade as "California white pine" products, do cease and desist from using, either orally or in writing, the word "white" in connection, combination or conjunction with the word "pine" or in connection with other word or words used in combination or conjunction with the word "pine."

And it is further ordered, That the said respondent, within 60 days from the receipt of this order, shall file with the Commission its report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

MEMORANDA

The Commission as of the same date promulgated findings and orders in 38 other cases. Findings and orders in such cases were similar except for the fact that in the cases of Cady Lumber Corporation, Docket 1662, George E. Breece Lumber Co., Docket 1663, and White Pine Lumber Co., Docket 1664, New Mexico concerns, designations New Mexico white pine, Arizona white pine, Western white pine, or white pine only, were employed.

Appearances in this group of cases were:

Mr. Eugene W. Burr for the Commission; *McCutchen, Olney, Mannon & Greene* of San Francisco, Calif., for Clover Valley Lumber Co., Docket 1621, and for twenty other respondents; *Goudge, Robinson & Hughes*, of Los Angeles, Calif., for Sugar Pine Lumber Co., Docket 1639; *Baker, Botts, Andrews & Wharton*, of Kansas City, Mo., for Pickering Lumber Co., Docket 1641, and for Forest Lumber Co., Docket 1649; *Mr. F. P. Farrell*, of Medford, Oreg., for Tomlin Box Co., Docket 1646; and *Mr. Chandler M. Wood*, of Flagstaff, Ariz., and *Mr. Raymond R. Ryan*, of Albuquerque, N. Mex., for Cady Lumber Corporation, Docket 1662, George E. Breece Lumber Co., Docket 1663, and White Pine Lumber Co., Docket 1664.

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Respondents making up this group of cases, their places of business, and their docket numbers follow:

Clover Valley Lumber Co., Reno, Nev., Docket 1621.

Castle Crag Lumber Co., Castella, Shasta County, Calif., Docket 1623.

Davies-Johnson Lumber Co., Calpine, Sierra County, Calif., Docket 1624.

Diamond Match Co., Chico, Calif., Docket 1625.

California Fruit Exchange, Sacramento, Calif., Docket 1626.

Likely Lumber Co., Likely, Modoc County, Calif., Docket 1627.

Penman Peak Lumber Co., Blairsden, Plumas County, Calif., Docket 1628.

Feather River Lumber Co., Delleker, Plumas County, Calif., Docket 1629.

California Door Co., Diamond Springs, Eldorado County, Calif., Docket 1630.

Kesterson Lumber Co., Dorris, Siskiyou County, Calif., Docket 1631.

Hobart Estate Co., San Francisco, Calif., Docket 1632.

Fruit Growers Supply Co., Los Angeles, Calif., Docket 1633.

McCloud River Lumber Co., McCloud, Siskiyou County, Calif., Docket 1635.

Siskiyou Lumber Co., Mt. Hebron, Siskiyou County, Calif., Docket 1636.

Swayne Lumber Co., Oroville, Butte County, Calif., Docket 1637.

Paradise Lumber Co., Paradise, Butte County, Calif., Docket 1638.

Sugar-Pine Lumber Co., Pinedale, Fresno County, Calif., Docket 1639.

Quincy Lumber Co., Quincy, Plumas County, Calif., Docket 1640.

Pickering Lumber Co., Kansas City, Mo., Docket 1641.

Spanish Peak Lumber Co., San Francisco, Calif., Docket 1642.

Lassen Lumber & Box Co., San Francisco, Calif., Docket 1643.

Red River Lumber Co., San Francisco, Calif., Docket 1644.

Owen-Oregon Lumber Co., Medford, Oreg., Docket 1645.

Tomlin Box Co., Medford, Oreg., Docket 1646.

Big Lakes Box Co., Klamath Falls, Oreg., Docket 1647.

Ewauna Box Co., Klamath Falls, Oreg., Docket 1648.

Forest Lumber Co., Kansas City, Mo., Docket, 1649.

Klamath Lumber & Box Co., Klamath Falls, Oreg., Docket 1650.

Lamm Lumber Co., Modoc Point, Klamath County, Oreg., Docket 1651.

Pelican Bay Lumber Co., Klamath Falls, Oreg., Docket 1652.

Algoma Lumber Co., Klamath Falls, Oreg., Docket 1654.

Chiloquin Lumber Co., Chiloquin, Klamath County, Oreg., Docket 1655.

Shaw-Bertram Lumber Co., Klamath Falls, Oreg., Docket 1656.

Braymill White Pine Co., Braymill, Klamath County, Oreg., Docket 1657.

California-Oregon Box & Lumber Co., Ashland, Oreg., Docket 1658.

Cady Lumber Corporation, Albuquerque, N. Mex., Docket 1662.

George E. Breece Lumber Co., Albuquerque, N. Mex., Docket 1663.

White Pine Lumber Co., Bernalillo, Sandoval County, N. Mex., Docket 1664.

Syllabus

IN THE MATTER OF

L. A. BELLINE, TRADING AS THE COOPERATIVE
BOOK COMPANY

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

Docket 1551. Complaint, Dec. 20, 1928—Decision, June 15, 1931

Where an individual engaged in the purchase, and sale throughout the United States, of a set of reference books known up to 1927 as "The American Reference Library", and, later, as "The Source Book", together with semi-annual cumulative supplements; in selling said books and supplements, to school teachers, principally, through agents operating in Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri, and other States,

- (a) Represented said American Reference Library as of recent publication and that certain designated persons well known as educators, public officials, writers, scientists and statesmen were contributors, revisers, or reviewers thereof, facts being books were originally published as early as 1912 and at time concerned there had been no substantial revision for a number of years, and the well known educators, etc., were not contributors, revisers or reviewers as represented, and had given no permission for the use of their names;
- (b) Falsely represented that said Library and Source Book had the indorsement of and testimonials from certain county superintendents and other educators and writers and that its agents had some connection with educational or school systems, whereby prospective customers might be materially assisted in securing desirable positions as school teachers;
- (c) Represented that \$59.50 was a special introductory price far below the usual and customary selling price of the set and cumulative extension service, and also that the books were given away to a limited and selected number of prospective school teachers as a means of introducing the publication into the schools, facts being \$59.50 constituted said individual's usual and customary price and prospective customers were not limited or selected in any way; and
- (d) Represented that loose-leaf supplements could be paid for at the rate of \$5.95 a year, with right of cancellation at will by the subscriber, facts being said cumulative loose-leaf supplement was never sold separately, price for set and books was \$59.50, payable in monthly installments extending over periods of from eight months to one year, failure to make any payment when due rendered entire account due and payable, at no time was anyone allowed to extend payments over a period of ten years, and contract entered into was a promissory note, prima facie binding purchaser when signed by him, and not cancelable at will;

With effect of deceiving customers and prospective customers throughout the various States and inducing their purchase of or subscription to said books and supplements in preference to other competitive publications, and with tendency so to do and thereby divert trade from competitors not using such false and misleading sales methods, statements, and representations:

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