

Syllabus

IN THE MATTER OF
THE ARMAND COMPANY, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1329. Complaint, June 27, 1925—Decision, Jan. 27, 1933*

Where a corporation engaged in manufacture, preparation, and extensive advertisement of toilet articles and cosmetics, including face powder, cold cream, and other merchandise of similar description, and in the sale of its said largely demanded products, under its name and mark on packages and containers in which offered the public, through wholesale, and retail, druggists, chiefly, and under a sales plan in accordance with which it included with vendees' orders one fourth dozen units for each dozen purchased from it, and wholesale dealers purchasing its said products from others did not have the benefit of such additional units; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its products at wholesale and at retail, through the medium of specified discounts from uniform retail price lists enclosed with each product,

(a) Made said policy generally known through order forms and trade papers, and otherwise, and its purpose to decline or discontinue dealings with those who refused to conform to said policy and prices, and did so decline or discontinue pending the giving of solicited oral, or written, assurances, or the signing or making of so-called "declarations of 'intention'", suggested by it, in accordance with which many dealers undertook both to respect its said prices and disavow any express or implied agreements so to do, and through the agreements thus in fact brought about, notwithstanding its studied disavowals, led to initiation or resumption of relations, discontinuance of price cutting and maintenance of its prices by dealers, including wholesale and retail drug concerns, and the many retail stores, and mail order department of a very large mail-order house; and

(b) Entered into agreements with wholesale dealer customers, pursuant to which they obligated themselves not to resell, and did not resell, its products to price cutting retail dealers including mail order houses and department stores, and took steps to cut off price cutters' sources of supply;

With the result that competition in the distribution and sale of its aforesaid products among wholesale and between retail dealers was suppressed, said dealers were constrained to sell such products at the wholesale and retail dealer prices fixed by it as aforesaid, and were prevented from selling the same at such lower prices as they might desire, and ultimate purchasers were deprived of the advantage in price which they would have otherwise obtained from the natural and unobstructed flow of commerce in the products involved under methods of free competition:

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

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Mr. Edward E. Reardon for the Commission.

Mr. Charles Wesley Dunn, of New York City, for respondents.

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 the various corporations, firms, and individuals, mentioned in the caption hereof,¹ and more particularly hereinafter described and referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of said act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Armand Company, hereinafter referred to as The Armand Company, is a corporation organized prior to November 1, 1919, under the laws of the State of Iowa, having its principal office and place of business in the city of Des Moines in said State.

Since on or about November 1, 1919, The Armand Company has been continuously, and now is, engaged in the manufacture, preparation, and sale of toilet articles and cosmetics, including face powder and cold cream, and other merchandise of similar description, hereinafter referred to as the products of The Armand Company, which have been and are manufactured and prepared by The Armand Company by means of secret formulae or processes known only to The Armand Company or its agents.

The Armand Company causes, and during said times has caused, its said products to be packed or wrapped in the packages or wrappers, in which they are and have been displayed for sale and sold to the members of the public purchasing them for use or consumption.

¹ Corporations, etc., referred to, follow:

The Armand Co., Inc.; Carl Weeks, individually and as president of The Armand Co.; Chet V. Gibson, individually and as vice president of The Armand Co.; Frank M. Stevens, individually and as vice president of The Armand Co.; Jessie E. Moore, individually and as secretary of The Armand Co.; Charles A. Bucher, individually and as agent of The Armand Co.; Ralph R. Morris, individually and as agent of The Armand Co.; Spurlock-Neal Co., Inc.; Berry, DeMerville & Co., Inc.; Robinson-Pettet Co., Inc.; Lamar & Rankin Drug Co., Inc.; Greiner-Kelly Drug Co., Inc.; The J. W. Crowder Drug Co., Inc.; San Antonio Drug Co., Inc.; Western Wholesale Drug Co., Inc.; Fuller-Morrison Co., Inc.; Humiston, Keeling & Co., Inc.; Peter Van Schaack & Sons, Inc.; The McPike Drug Co., Inc.; Faxon-Gallagher Drug Co., Inc.; J. S. Merrell Drug Co., Inc.; A. M. Berry, A. D. Berry, F. S. Berry, W. D. Phillips, M. P. Williams, the first names being unknown to the Federal Trade Commission, copartners doing business under the trade name of Berry, DeMerville & Co.; The Fair, Inc.; E. H. Cone, Inc.; T. C. Marshall, doing business under the name of Marshall's Pharmacy; Clarence E. Jeffares and Malcolm J. Long, copartners, doing business under the trade name of Jeffares-Long Drug Co.; Owl Drug Co., Inc.

The said packages or wrappers had and still have the word "Armand" printed or displayed thereon, as the trade mark of said company, and The Armand Company causes, and during the above times has caused, the word "Armand" to be used and displayed as part of the name, designation, or description of the content of the said packages or wrappers, as, for example, "Armand Cold Cream Powder", "Armand Bouquet Powder", and "Armand Cold Cream Rouge", etc.

In consequence of the manufacture or preparation of the said products of The Armand Company by or under secret formulae or processes as above set forth, the names and said trade mark, above referred to and described, on the said packages or wrappers, respectively, are the sole means of the identification of said products by the trade or by the users or consumers thereof in the purchase and sale of the same, and during the said times The Armand Company is and has been by reason thereof the sole source of supply of the same, and has had and continues to have a pure monopoly in their production, and in the first or original sale of the same in the order of their distribution as part of the general merchandise stock in the United States to the members of the public who purchase the same for use or consumption.

The said products of The Armand Company are and have been useful and necessary articles of merchandise and during the aforesaid times there has been and is a substantial demand therefor throughout the United States by members of the public, users or consumers thereof.

PAR. 2. During the aforesaid times, the respondent, Carl Weeks, is and has been the president and treasurer, respondents Chet V. Gibson and Frank M. Stevens the vice presidents and respondent Jessie E. Moore the secretary of The Armand Company above named. The said officers were also the directors of The Armand Company and as such officers and directors were in control of its business and authorized and empowered to do the acts and things on its behalf hereinafter specified. The respondents Charles A. Bucher and Ralph R. Morris, have been and are the agents, respectively, of The Armand Company, in the cities of Pittsburgh in the State of Pennsylvania, and Chicago in the State of Illinois.

PAR. 3. The following respondents, above named, are corporations, organized, respectively, under the laws of the following States, having their usual and principal places of business, respectively, in the following cities in the said States: Spurlock-Neal Co. and Berry, DeMoville & Co., in Nashville, Tenn.; Robinson-Pettet Co., in Louis-

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ville, Ky.; Greiner-Kelly Drug Co. and The J. W. Crowds Drug Co. in Dallas, Tex.; San Antonio Drug Co., in San Antonio, Tex.; Lamar & Rankin Drug Co., in Atlanta, Ga.; Western Wholesale Drug Co., in Los Angeles, Calif.; Fuller-Morrison Co.; Humiston, Keeling & Co., and Peter Van Schaack & Sons, in Chicago, Ill.; McPike Drug Co., and Faxon-Gallagher Drug Co., in Kansas City, Mo.; and J. S. Merrell Drug Co., in St. Louis, Mo.

A. M. Berry, A. D. Berry, F. S. Berry, W. D. Phillips, and M. P. Williams, respondents above named, are individuals who were copartners doing business under the trade name of Berry, DeMoville & Co. The said copartnership having been dissolved, the above corporation, Berry, DeMoville & Co., was organized on March 4, 1925, and took over and has since conducted the business formerly conducted by the said partnership and with the same executive and sales organization and policies.

The respondents above named were and are separately and severally engaged in the wholesale drug business and during the aforesaid times were and are wholesale dealers competing generally with each other and with other dealers hereinafter referred to as "dealers not specifically named as respondents", in the same territory in the sale of toilet articles, cosmetics, and similar merchandise, packed or wrapped in packages or wrappers in which the same are and have been displayed and sold to members of the public purchasing the same for use or consumption, and which when sold by said respondents are and have been caused by them to be transported to the purchasers thereof located in various States of the United States, other than in the State of origin of the shipments.

PAR. 4. During the aforesaid times, the respondent, The Fair, is and has been a corporation organized under the laws of the State of Illinois with its usual place of business in the city of Chicago in said State; the said respondent conducts a retail department store and is and has been engaged in the sale at retail of toilet articles, cosmetics, and similar merchandise, packed or wrapped in packages or wrappers in which the same are displayed and sold to members of the public purchasing the same for use or consumption; respondent, E. H. Cone, Inc., is and has been a corporation organized under the laws of the State of Georgia, with its usual place of business in the city of Atlanta in said State; respondent T. C. Marshall, the first name being unknown to the Federal Trade Commission, is an individual doing business under the name of Marshall's Pharmacy in the said city of Atlanta; respondents Clarence E. Jeffares and Malcolm J. Long, are and have been copartners doing business under the trade name of Jeffares-Long Drug Co., with their principal place of

business in the aforesaid city of Atlanta; and respondent, Owl Drug Company, is and has been a corporation organized under the laws of the State of Missouri with its usual place of business in Kansas City in said State. The respondents above named in paragraph 4 herein, with the exception of The Fair, are and have been engaged in the business of selling drugs at retail and in connection with their said businesses are and have been engaged in the sale at retail to the members of the public of toilet articles, cosmetics, and similar merchandise, packed or wrapped in packages or wrappers in which the same are and have been displayed and sold to members of the public purchasing the same for use or consumption. All of the aforesaid respondents herein are and have been competing generally with each other and with other dealers, hereinafter referred to as "dealers not specifically named as respondents", in the same territory in the sale of toilet articles, cosmetics, and similar merchandise, packed or wrapped as aforesaid.

PAR. 5. The Armand Company during the aforesaid times has continuously sold and now sells its said products, packed or wrapped as aforesaid, to individuals, firms, and corporations, retail dealers throughout the United States, including those mentioned above in paragraph 4 herein, who resell and have resold the same to the said members of the public, and The Armand Company has also during said times sold and continues to sell its said products to individuals, firms, and corporations, wholesale dealers, throughout the United States, including those mentioned above in paragraph 3 herein, who sell and have sold the same to retail dealers for resale to the said members of the public.

The Armand Company causes, and during the times above mentioned has caused, its said products when sold by it, to be transported from without the District of Columbia, packed or wrapped as described above, to the said purchasers, individuals, firms, and corporations, the wholesale and retail dealers above mentioned and referred to, located in the District of Columbia, and in the various States of the United States, other than in the State of origin of the shipment.

During the times above mentioned, other individuals, firms, and corporations have been, and now are, engaged in manufacturing and selling toilet articles, cosmetics, and similar merchandise, packed or wrapped in the packages or wrappers in which they are and have been displayed for sale and sold to the members of the public purchasing them for use or consumption, and who cause and have caused the same, when sold by them, to be transported from without the District of Columbia to the purchasers, individuals, firms,

and corporations, wholesale and retail dealers, located in the District of Columbia and in the various States of the United States, other than in the State of origin of the shipment, and including those States into which, from other States than those in which its shipments originate, The Armand Company causes and has caused its said products to be transported.

The Armand Company has been during said times and now is in competition in commerce with the above individuals, firms, and corporations, in the sale of its said products.

PAR. 6. The Armand Company, its officers and agents, including its officers and agents named as respondents herein, and the other respondents above named in paragraphs 3 and 4 herein, continuously during the above period from on or about November 1, 1919, to the date hereof have been, and are, unlawfully, knowingly and with intent so to do, engaged in a conspiracy, common understanding, combination and agreement with and among themselves and, from time to time during the aforesaid period with certain other individuals, firms, and corporations engaged in the wholesale and retail drug business throughout the United States hereinafter referred to as "dealers not specifically named as respondents", their officers and agents (the particulars of whose names, addresses, and places of business are at present unknown to the Federal Trade Commission, and owing to their large and changing number cannot be obtained without unduly delaying this proceeding, so that it is impracticable to ascertain and set forth their names herein), to monopolize and unduly, unreasonably, directly and oppressively to restrain the interstate business, trade, and commerce of respondents, of the aforesaid "dealers not specifically named as respondents", and of their competitors, and the interstate business, trade and commerce in the said products of The Armand Company, and in accordance with and in pursuance of said conspiracy, common understanding, combination and agreement the respondents and those referred to above as "dealers not specifically named as respondents" have monopolized, and unduly, unreasonably, directly and oppressively have restrained the interstate trade and commerce of themselves, of their competitors and the interstate business, trade and commerce in the said products of The Armand Company—

(a) By selling the said products at uniform, noncompetitive wholesale and retail prices, arbitrarily suggested and fixed by The Armand Company, its officers and agents, largely in excess of the wholesale and retail prices which would have prevailed for the said products to retail dealers and the public purchasing the same for use or consumption if the respondents had not engaged in the con-

spiracy, common understanding, combination and agreement aforesaid, and which return and have returned to the retail dealer respondents and the other retail dealers, referred to among those not specifically named as respondents herein, profits of approximately 100 percent upon the purchasing price of the same.

(b) By refusing to sell the said products, with unimportant exceptions, to wholesale and retail dealers other than to those engaged in the drug business.

(c) By refusing to sell the said products to wholesale and retail dealers who sold or intended to sell the same at prices other than the aforesaid suggested or fixed prices, or who sold the said products to other dealers who resold or intended to resell the same at other than the said fixed prices.

PAR. 7. In the accomplishment and furtherance of the aforesaid conspiracy, common understanding, combination and agreement the respondents, The Armand Company, its officers and agents, on or about November 1, 1919, and continuously since then to the date hereof have suggested and fixed uniform wholesale and retail prices for the products of The Armand Company and have caused the said retail prices to be printed on the packages or wrappers of the said products, displayed for sale and sold to the public as aforesaid. They have by national advertising in newspapers and magazines and by other means created and caused a substantial demand among the members of the said public for the use or consumption of the said products as necessary and useful articles, and not having offered, sold or distributed the said products directly from The Armand Company to the said users or consumers thereof, but on the contrary offering and having offered the same for sale and distribution to the said public solely through the ordinary and usual channels of trade in and distribution of such products from producer to consumer, the wholesale and retail dealers in the same throughout the United States, including the respondent wholesale and retail dealers and the said dealers not specifically named as respondents, who are and were separate and distinct entities and who were and should have been conducting business in full and free competition with each other as to prices and conditions of sale, the said respondents, The Armand Company, its officers and agents, continuously during the aforesaid period, by reason of and relying on the aforesaid monopoly of The Armand Company in the production and first sale of its said products to effectuate the same—

(1) Have announced and made known generally to all wholesale and retail dealers in toilet articles, cosmetics, and similar merchandise throughout the United States, including the respondents and

those dealers referred to, not specifically named as respondents herein, by letters, personal interviews, and by statements and conditions printed on the order blanks used and signed by purchasers from The Armand Company in buying said products and by other means, that The Armand Company had adopted and was maintaining a policy of suggesting to wholesale and retail dealers the resale prices of its said products;

(2) Have announced continuously to the said dealers, generally, that as part of its said policy The Armand Company would decline to sell to dealers who sold its said products at prices other than the said uniform suggested or fixed prices or who sold them to others who did, and during said times have refused to sell to all such dealers who so sold the said products;

(3) Have announced it generally by the aforesaid means as their practice and have made it their practice during the said times to secure from all persons or dealers, who dealt in or who desired to deal in the products of The Armand Company, oral or written declarations, understandings or agreements as to whether the said persons or dealers would resell the said products at the said suggested or fixed resale prices, and have announced, generally, that The Armand Company would sell its said products for resale to those persons or dealers only, whose expressed or understood intentions were satisfactory to The Armand Company, its officers and agents, in accordance with the said plan or policy of the said company;

(4) Have continuously during said times required retail dealers, including those named and those referred to and not specifically named as respondents herein, who had purchased and were the owners of the said products of The Armand Company not to sell the said excepting at retail within the purchaser's own store and not to split or to divide the said products, so purchased and in their ownership and possession, with any other dealer therein, under threat of refusal to further sell or to permit others to sell to said retail dealers the products of The Armand Company;

(5) Have continuously during said times required wholesale dealers, including those mentioned and those referred to and not specifically mentioned as respondents herein, who had purchased and were owners of the products of The Armand Company, not to sell or deliver any of their said products so owned by them to certain other dealers in such products, or to certain or any other dealers in or within certain prescribed areas or communities in a State or States or municipality thereof indicated by The Armand Company, its officers and agents, but to turn over the orders received by them from others

in said indicated areas or communities to The Armand Company to be rejected or filled and the said products sold and delivered for the account of the said dealers, the aforesaid owners of the said products purchased from The Armand Company, at the discretion of The Armand Company, for the purpose of preventing its said products from being sold out of the stock of the same owned by the said dealers to other dealers, who, with unimportant exceptions are not engaged in the wholesale or retail drug business or who have resold the said products at other than the said suggested or fixed prices, and for the purpose of demonstrating to dealers, generally, that The Armand Company, its officers and agents, could and did prevent dealers from obtaining the said products for sale in their business who did not observe the said policy or plan of The Armand Company, its officers and agents, or the said suggested or fixed prices thereof for its said products in reselling the same;

(6) Have continuously during said times and by way of threats informed wholesale and retail dealers in such products, including those mentioned and those referred to and not specifically mentioned as respondents herein, of instances wherein The Armand Company, its officers and agents, have ceased to fill orders for its said products from dealers who have sold the same or sold to others who sold the same at prices other than the said suggested or fixed prices of The Armand Company, with the purpose and effect of notifying and threatening said dealers that The Armand Company, its officers and agents, would take the same action with them under similar circumstances or conditions;

(7) Have continuously during the aforesaid times solicited and secured directly through the officers of The Armand Company, and its agents, and from wholesale and retail dealers, including those mentioned and those referred to and not specifically named as respondents herein, selling or dealing in the products of The Armand Company, information and reports concerning the sales of the said products and those dealers selling them at other than the said suggested or fixed prices or to dealers other than those engaged in the drug business, with unimportant exceptions, and upon obtaining such information and reports have urged those dealers so reported to cease selling at other than the said suggested or fixed prices or to dealers not engaged in the drug business;

(8) Have during said times caused identifying numbers or marks to be placed upon the cases, packages or wrappers of the products of The Armand Company for the purpose of tracing the ownership and possession of the same after their sale by The Armand Company and learning the names of dealers, who sell or have sold the same at

other than the said suggested or fixed prices or who have sold them to others who have so sold them, or the names of those who have sold them to dealers other than those engaged in the drug business in order to urge, induce, coerce and restrain the said dealers from selling the said products at other than the said suggested or fixed prices or selling them to others who so sell the said products or from selling them to dealers other than those engaged in the drug business, and by reason of the foregoing The Armand Company, its officers and agents, have during the aforesaid times learned from their competitors and others the names of dealers who have not observed the aforesaid conditions regarding the sale of the said products and have induced, coerced, and restrained said dealers, including those mentioned and those referred to and not specifically mentioned as respondents herein, from continuing the sale of the said products other than in accordance with the said plan or policy of The Armand Company as to the said suggested or fixed prices or the other respects above mentioned and set forth;

(9) Have continuously during the said times made it their general, uniform policy or plan, with unimportant exceptions, to refuse to sell and they have in accordance therewith refused to sell the products of The Armand Company to any dealer in such merchandise, excepting to those conducting the wholesale or retail drug business and have during said times as part of said policy or plan refused to permit and have prevented dealers, including those mentioned and those referred to and not specifically mentioned as respondents herein, who had bought the products of The Armand Company and were the owners and in possession thereof, from reselling out of their said stock of said products in their said ownership and possession, any of the same to dealers, with unimportant exceptions, other than to those engaged in the drug business.

PAR. 8. In the accomplishment and furtherance of the aforesaid conspiracy, common understanding, combination and agreement, the respondents above named, the wholesale and retail dealers mentioned in paragraphs 3 and 4 herein and those referred to and not specifically mentioned as respondents, well knowing the aforesaid policy or plan of The Armand Company, its officers and agents, and the acts and things done by them, above set forth, to effectuate the same, during the aforesaid times, knowingly, unlawfully and with intent so to do—

(1) Have signed orders for the purchase of the said products of The Armand Company on the order blanks of that company, on which were set out the aforesaid policy or plan of said company suggesting the resale prices of its said products and that it would

decline to sell to dealers who do not resell them for the same, and have in agreement therewith and in common understanding with each other purchased the said products of The Armand Company.

(2) Have in accordance with the said agreement and common understanding aforesaid resold the said products purchased by them at the said suggested or fixed prices only.

(3) Have in accordance with the said agreement and common understanding aforesaid expressed their intentions, prior to the purchase of the said products, orally and in writing that they would, respectively, resell the said products only at the said suggested or fixed prices in accordance with the said policy or plan of The Armand Company;

(4) Have, as retail dealers and as owners of the said products, in agreement and common understanding with The Armand Company, its officers and agents, sold the said products at retail, only, within their respective stores and have refused to split or divide the same with other dealers for sale by them;

(5) Have, as wholesale dealers and owners of said products, in agreement and common understanding with The Armand Company, its officers and agents, refused to sell any of said products to dealers who were not engaged in the drug business, with unimportant exceptions, to certain other dealers or to certain or any dealers in or within certain prescribed areas, or communities in a State or States or municipality thereof, and in cooperation with The Armand Company, its officers and agents, and at their request have turned over to the said company orders which had been received by them from such other dealers to be rejected or to be filled and the said products sold and delivered for their account by The Armand Company, its officers and agents, at the discretion of the said company in order to prevent those who were not dealers in drugs, with unimportant exceptions, or those who had sold said products at other than the said suggested or fixed prices from purchasing them for resale;

(6) Have made reports to and furnished information to and in cooperation with The Armand Company, its officers and agents, as to the nature of the business of those dealers who desired to purchase said products and of those who had resold the same at prices other than the said prices suggested or fixed by The Armand Company.

(7) Have ceased selling the said products at other than the said suggested or fixed prices at the request of The Armand Company, its officers and agents, and thereafter have sold the same at the said prices.

PAR. 9. The aforesaid acts and things done by respondents, including those referred to and not specifically mentioned as respond-

ents, pursuant to the said unlawful conspiracy, common understanding, combination and agreement not to sell or deliver any of the said products of The Armand Company to any dealer not engaged in the drug business, with unimportant exceptions, or to certain other dealers in such products, or to certain or any other dealers in or within certain prescribed areas or communities in a State or States or municipality thereof, indicated by The Armand Company, its officers and agents, and to fix uniform wholesale and retail prices at which the said products of The Armand Company, when sold by said company, should be resold at wholesale and retail, tended unduly, directly and oppressively to restrain the interstate business, trade and commerce of the respondents and of their competitors and the interstate business, trade and commerce in the said products and to create a monopoly in the sale of the same in The Armand Company and said respondents, including those referred to and not specifically named as respondents, from the producer of the said products to the consumer.

PAR. 10. The above alleged acts and things done by respondents are all to the prejudice of the public, and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above-named respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral arguments, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and the conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Armand Company, is a corporation organized in the year 1916 under the laws of the State of

Iowa and having its principal place of business now and at all times since the date of its organization in the city of Des Moines, Iowa.

PAR. 2. Since on or about November 1, 1916, The Armand Company has been continuously and now is engaged in the manufacture, preparation and sale of toilet articles and cosmetics, including face powder and cold cream and other merchandise of similar description, hereinafter referred to as the cosmetic products of The Armand Company.

PAR. 3. The Armand Company causes and, during all the times since on or before November 1, 1919, has caused its said cosmetic products to be packed or wrapped in the packages or wrappers in which they are and have been displayed for sale and sold to the members of the public purchasing them for use or consumption. The packages or wrappers had and still have the word "Armand" printed or displayed thereon, as the trade mark of said company, and The Armand Company causes and, during the said times, has caused the word "Armand" to be used and displayed as part of the name, designation, or description of the content of the said packages or wrappers as, for example, "Armand Cold Cream Powder", "Armand Bouquet Powder", and "Armand Cold Cream Rouge", etc.

PAR. 4. The Armand Company, during all the times mentioned and referred to in paragraph 3 hereof, has sold and now sells its cosmetic products packed or wrapped as above stated to individuals, firms, and corporations throughout the United States, wholesale and retail dealers in such products, including the respondent wholesale and retail dealers.

The Armand Company causes and during said times has caused its cosmetic products, when sold by it to the wholesale and retail dealers above mentioned and referred to, to be transported from without the District of Columbia, packed or wrapped as above described, to the individuals, firms, and corporations above mentioned, and referred to, the purchasers of the products, located in the District of Columbia and in the various States of the United States, other than the State of the origin of the shipment of the products by The Armand Company.

PAR. 5. During all the times since on or before September, 1919, other individuals, firms, and corporations other than The Armand Company and hereinafter referred to as sellers, have been and now are engaged in selling toilet articles, cosmetics, face powders, and similar merchandise, hereinafter called cosmetic products, packed or wrapped in the packages or wrappers in which they are and have

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been displayed for sale and sold to the members of the public for use and consumption.

Some of the sellers are and have been manufacturers engaged in the sale of the cosmetic products manufactured by them.

Others of the sellers, including the respondent wholesale dealers above mentioned and referred to, are and have been during said times engaged in the sale of the cosmetic products of the said manufacturers and also in the sale of the cosmetic products of The Armand Company.

The sellers, manufacturers, and others above mentioned, sold their said cosmetic products, manufactured or purchased by them, to individuals, firms, and corporations, wholesale and retail dealers therein, purchasers thereof located in the District of Columbia and in States other than the State of the sellers, respectively, and other than in the State of origin of the shipment of the products to them by the sellers.

The sellers cause and have caused the products when so sold by them, as set forth above, to be transported from their respective States and from without the District of Columbia to the said individuals, firms, and corporations, the said wholesale and retail dealers, and the purchasers thereof.

The Armand Company has been during said times and now is in direct and substantial competition in commerce with the sellers, the above individuals, firms, and corporations.

PAR. 6. The following respondents are corporations organized, respectively, prior to the year 1919 under the laws of the following States and having their usual and principal places of business and doing business as wholesale druggists, respectively, at all times since their organization in the following cities in the said States: Robinson-Pettet Co., in Louisville, Ky.; San Antonio Drug Co., in San Antonio, Tex.; Lamar & Rankin Drug Co., in Atlanta, Ga.; Humiston-Keeling & Co., in Chicago, Ill.; and The McPike Drug Co., in Kansas City, Mo.

PAR. 7. The respondents, A. M. Berry, A. D. Berry, F. S. Berry, W. D. Phillips and M. P. Williams were copartners under the trade name Berry, DeMotive & Co., doing business as wholesale druggists in Nashville, Tenn., prior to March 4, 1925, at which time the said copartnership was dissolved and said respondents ceased to do business as copartners, being succeeded in the wholesale drug business in Nashville, Tenn., by the respondent, Berry, DeMotive & Co., a corporation.

PAR. 8. The following respondents, above named, were organized as corporations, respectively, prior to 1919 under the laws of the

following-named States, having their usual and principal places of business and doing business as wholesale druggists, respectively from the date of their organization until they were dissolved and ceased to do business as hereinafter set forth, in the following-named cities in the said States: Spurlock-Neal Co., in Nashville, Tenn.; Greiner-Kelly Drug Co., and The J. W. Crowds Drug Co., in Dallas, Tex.; Western Wholesale Drug Co., in Los Angeles, Calif.; Fuller-Morrison Co. and Peter Van Schaack & Sons, in Chicago, Ill.; Faxon-Gallagher Drug Co., in Kansas City, Mo.; and J. S. Merrell Drug Co., in St. Louis, Mo.

The respondent corporation, Berry, DeMerville & Co., was organized on March 4, 1925, under the laws of Tennessee and was engaged in the wholesale drug business with its place of business in Nashville, Tenn., from the time of its organization until it was dissolved as a corporation, as hereinafter stated. The said respondent succeeded and took over and conducted while it existed as a corporation the business formerly conducted under the name Berry, DeMerville & Co., by the copartners mentioned in paragraph 7 hereof, and with the same executive and sales organization and policies that were formerly of the copartnership.

Each and all of the respondent corporations mentioned in this paragraph were dissolved in the year 1929 and have since ceased to do business.

PAR. 9. The respondents above named in paragraph 6 hereof are and have been since their organization as corporations and the respondents mentioned and referred to in paragraphs 7 and 8 hereof, during the times referred to in said paragraphs were separately and severally engaged as wholesale dealers in the wholesale drug business and were competing generally and severally with each other and with other dealers in the same territory in the sale of toilet articles, cosmetics, and similar merchandise packed or wrapped in packages or wrappers in which the said articles and merchandise are and have been displayed and sold to members of the public purchasing the same for use or consumption and which when so sold by the said respondents have been caused by them to be transported from the States of said respondents, respectively, to the purchasers located in various States of the United States other than in the State of origin of the shipments.

PAR. 10. The respondent, The Fair, is and has been since prior to 1919 a corporation organized under the laws of the State of Illinois and having its usual place of business and conducting a retail department store in Chicago, Ill.

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The respondent, T. C. Marshall, is an individual doing business as a retail druggist during the times above mentioned in Atlanta, Ga., under the name of Marshall's Pharmacy.

The respondents, Clarence E. Jeffares and Malcolm J. Long, are individuals, copartners doing business as retail druggists in the city of Atlanta, Ga., during the times above mentioned under the trade name of Jeffares-Long Drug Co.

PAR. 11. The respondent, Owl Drug Company, was a corporation organized prior to 1919 under the laws of the State of Missouri and having its usual place of business and doing business as a retail druggist in Kansas City, Mo., from the time of its organization until it was dissolved and ceased to do business as hereinafter set forth. The respondent, E. H. Cone, Inc., was a corporation organized prior to September, 1922, under the laws of the State of Georgia, and having its usual place of business and doing business as a retail druggist in the city of Atlanta, Ga., from the time of its organization until it was dissolved and ceased to do business as hereinafter set forth.

The respondent, Owl Drug Company, was dissolved as a corporation sometime after the month of June, 1925, and the respondent, E. H. Cone, Inc., was dissolved on or about October 15, 1928, and these respondents have ceased business.

PAR. 12. During all the times since on or about November 1, 1919, the respondent, Carl Weeks, is and has been the president, the treasurer and a director, and the respondent, Jessie E. Moore, the secretary and a director of The Armand Company. The respondent, Frank M. Stevens, was a vice president and a director of The Armand Company from on or about the year 1919 to the year 1928, when he resigned as vice president and as director and since 1928 he has not been connected with said respondent. The respondent, Chet V. Gibson, was a vice president and a director of The Armand Company from about the year 1920 until sometime in the year 1926 when he resigned and since then he has not been connected with said respondent.

The respondent, Ralph R. Morris, is and has been during the times above mentioned the agent of The Armand Company in Chicago, Ill., up to the year 1930, when he ceased to be its agent and is no longer connected with The Armand Company. The respondent, Charles A. Bucher, was the agent of The Armand Company in Pittsburgh, Pa., from on or about the year 1919 to the year 1926, when he resigned, and since then he has not been connected with The Armand Company or its business.

PAR. 13. The respondents mentioned in paragraphs 10 and 11 hereof, during the times mentioned and referred to in said para-

graphs, are and have been engaged in the sale at retail to members of the public, consumers, among other things, of toilet articles, cosmetics, face powders, and similar merchandise, packed or wrapped in the packages or wrappers in which they are and have been displayed and sold to members of the public purchasing them for use or consumption, and said respondents have been competing with other dealers located in the same territory in the sale of toilet articles, cosmetics, face powders, and similar merchandise, packed or wrapped as above described.

PAR. 14. The Armand Company during all of the times since on or about November 1, 1919, has advertised and still advertises its products throughout the United States in newspapers and magazines and in this way and by other means, including the distribution of circulars, letters, and free samples of its products among the trade and public has caused a large and substantial demand to be created and to exist for them throughout the United States among the members of the public, the consumers of such products.

PAR. 15. During all of the times since on or about November 1, 1919, by far the greater part of the business in the manufacture and sale of the Armand products is and has been confined to the manufacture and sale of two of the products, namely, the face powders sold under the names, Armand Cold Cream Powder and Armand Bouquet Powder.

In the four years immediately prior to the issuance of the complaint herein by the Commission, from 1921 to 1924, the sales by The Armand Company of those two products alone together averaged annually 85 per centum of the total business of The Armand Company in the sale of its products.

PAR. 16. The demand by members of the trade in such toilet articles to supply the requirements of consumers for the purchase of the products of The Armand Company is and was for more than five years prior to the issuance of the complaint herein large, substantial and extensive throughout the United States.

In the year 1929 The Armand Company, besides its sales to retail dealers, was selling its products to 247 wholesale druggists in the United States.

PAR. 17. On November 1, 1919, The Armand Company adopted a policy of suggesting to dealers the resale prices for its products and made the first public announcement concerning its policy in writing which it published and circulated among the wholesale and retail druggists of the United States.

On the occasion of the first announcement of The Armand Merchandising Policy on November 1, 1919, and at all times since then,

The Armand Company, in announcing and stating the policy to dealers in toilet articles has caused only part of the policy to be expressed in writing. Other parts or conditions of its merchandising policy it caused and still causes to be communicated to the dealers in toilet articles only verbally by its representatives. The part of The Armand Merchandising Policy published in writing is found on its order forms and in trade papers and has been invariably, since November 1919, as follows:

THE ARMAND MERCHANDISING POLICY

1. The Armand business is founded and built upon two fundamental principles, to wit: First, highest attainable quality of product, and second, absolute and unquestioned fairness and justice in all relations with customers, both trade and consumer.

2. In the interest of fairness and justice to all concerned, The Armand Company, Inc., suggests fair resale prices for Armand products and declines to sell to dealers who do not charge them. Likewise, the company declines to sell to dealers who effect any other unfair trade practice in merchandising Armand products. Sales once made are, however, absolute and unconditional.

NOTE 1. The Armand Company, Inc., is pleased to include the free goods herein specified as an evidence of its appreciation of the buyer's continued and active interest in the merchandising of Armand products. They are a generous dividend upon a valued investment of good will in the Armand business.

2. The Armand Company, Inc., allows transportation charges, on all shipments upon presentation of the transportation company's receipt.

3. The Armand Company, Inc., makes no consignments. Its goods may be and are ordered for purchase only.

4. All orders are subject to acceptance and confirmation by The Armand Company, Inc., at its principal office in Des Moines, Iowa.

5. This order is accepted in consideration of the promise, hereby made, that should the purchaser at any time desire to sell any or all of his stock of Armand products other than at retail and within his own store or stores, or through a transfer of his entire business, he will first offer to sell them to The Armand Company, Inc., at the original cost to him, and The Armand Company, Inc., will immediately repurchase them.

PAR. 18. The Armand Company since on or about November 1, 1919, has offered its products for sale and sold them to wholesale and retail dealers on the basis of prices per dozen units of each of the products, respectively, at which the various products have been listed by The Armand Company in printed price lists, which have been published and circulated among the wholesale and retail dealers in such products in the United States. The published price lists have been printed during said times on order blanks on which only the part of the Armand merchandising policy, which has been published in writing as set forth in paragraph 17 hereof, was printed.

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The suggested retail prices mentioned in the price lists were and are printed by The Armand Company on the individual packages or wrappers, respectively, in which The Armand Company sold its products to dealers for resale to the consumers.

PAR. 19. A copy of one of the price lists above mentioned is as follows:

ARMAND, *Des Moines*.

Ship, transportation charges allowed:

Dozen	Article	Each	Per dozen
-----	Cold cream powder ¹	\$1. 00	\$8. 00
-----	Bouquet powder ¹	. 60	4. 00
-----	Symphonie compact ¹	. 60	4. 00
-----	Rouge ¹	. 60	4. 00
-----	Rouge refill ¹	. 25	2. 00
-----	Cream rouge ¹	. 60	4. 00
-----	Lip stick ¹	. 25	2. 00
-----	Lip stick ¹	. 60	4. 00
-----	Lip stick ¹	1. 00	8. 00
-----	Double compacts (oxidized silver) ¹	1. 50	12. 00
-----	Compacts refills.....	. 50	4. 00
-----	Do.....	. 25	2. 00
-----	Eau de Cologne cleansing cream ¹	1. 25	10. 00
-----	Eau de Cologne cleansing cream ¹	. 60	4. 00
-----	Cold cream (jars) ¹	1. 25	10. 00
-----	Cold cream (jars).....	. 50	4. 00
-----	Cold cream (tubes).....	. 25	2. 00
-----	Vanishing cream (jars).....	. 50	4. 00
-----	Vanishing cream (tubes).....	. 25	2. 00
-----	Foundation creme.....	1. 00	8. 00
-----	Skin and tissue cream.....	1. 00	8. 00
-----	Bath powder.....	1. 00	8. 00
-----	Talcum powder.....	. 25	2. 00
-----	Handola.....	. 50	4. 00
-----	Astringent tonic.....	1. 00	8. 00
-----	Astringent tonic.....	. 50	4. 00
-----	Brilliantine.....	. 50	4. 00
-----	Beau 'K' perfume (8 oz. bot.).....	3. 00	12. 00
-----	Beau 'K' perfume (\$1 bot.).....	1. 00	8. 00

¹ ¼ dozen free with each full dozen.

² ½ dozen lip and cheek rouge free.

³ 25% free goods in face powder.

⁴ 1 free with each 4.

Total: \$-----

Terms: 30 days net; 2% cash 10 days. \$200 or more, 15%.

Quantity discounts: \$24, 3%; \$48, 5%; \$100, 10%.

Total: \$-----

Dealer's name.....

Town and State.....

This order signed by.....

Armand merchandising policy on back

PAR. 20. The Armand Company sold its products to wholesale dealers at the list prices per dozen units listed in its price lists above mentioned and allowed the wholesale dealers a trade discount of 15 percent and a discount of 2 percent for cash in 10 days, terms net 30 days, and transportation charges allowed to the purchaser.

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PAR. 21. The Armand Company in the sale of its products to wholesale dealers offered and delivered to them with the purchase of each full dozen units of the said certain products, referred to in its price lists above mentioned, one fourth dozen units extra of the same products bought by the purchaser, and the wholesale dealers at the suggestion of The Armand Company sold the Armand products to retail dealers at the prices at which they were listed per dozen units in the price lists above mentioned and regularly, in turn, delivered the extra one fourth dozen units to their retail dealer purchaser with each full dozen units of the said products purchased.

PAR. 22. The prices at which The Armand Company has listed and sold its products to dealers and the prices which it has suggested to dealers and caused to be printed on the packages or wrappers as the retail prices per package or unit to consumers have always been the same sums in amount for its various products, respectively.

The prices per dozen units and the suggested retail prices for the Armand Bouquet Powder and the Armand Cold Cream Powder, the sale of which together constituted 85 percent of the total business of The Armand Company in the sale of its products are and have been \$4 and \$8 per dozen units and the suggested retail prices, 50 cents and \$1, respectively.

PAR. 23. Wholesale dealers in cosmetics and toilet articles who engaged in the sale of the Armand products and were unable to purchase such products from The Armand Company, and were obliged to purchase them, if and when they could, elsewhere, and retail dealers who were unable to purchase the Armand products from The Armand Company and purchased them for resale, if and when they could, from the wholesale dealers referred to herein, did not receive with their respective purchases of the Armand products the extra one fourth dozen units above mentioned.

PAR. 24. The Armand Company has made it an unwritten part of its merchandising policy to have the resale of its products confined as far as possible to the wholesale and retail drug trade.

Ninety-one percent approximately of its own total sales of its products were made by The Armand Company to wholesale and retail druggists, represented approximately as follows: 30 percent to wholesale druggists and 61 percent to retail druggists.

The remaining 9 percent of its sales were made by The Armand Company principally to department stores in the larger cities, to general merchants in small towns, in which there was no retail druggist and, since the year 1929, included sales to a large mail-order house and its subsidiary retail general merchandise stores.

Prior to May 22, 1922, The Armand Company sold its products to one wholesale dry goods dealer, but beginning sometime since that date it has sold to wholesale dealers in the drug trade only.

With regard to the resale of its products by wholesale and retail druggists to whom it had sold them, the Armand Company made it an unwritten part of its merchandising policy to suggest and it has suggested to such wholesale dealers that they do not sell the Armand products to department stores.

PAR. 25. Shortly after the announcement of its resale merchandising policy to the wholesale and retail drug trade on November 1, 1919, for a period of two years more or less, beginning about the year 1920, The Armand Company requested its dealers and other dealers who wished to buy its products, individually and separately, directly and through its salesmen, to make to it a written and signed declaration of intention as to the manner in which they intended to resell The Armand Company's products bought by them, and The Armand Company sent to the dealers and submitted to them a model form of declaration of intention to be signed by the dealer and returned to The Armand Company.

PAR. 26. A copy of the declaration of intention, mentioned in paragraph 25 hereof, sent to wholesale and retail dealers, is as follows:

THE ARMAND COMPANY,

Des Moines, Iowa.

GENTLEMEN: The undersigned wishes to freely and voluntarily make the following declaration of intentions, which is not, and does not constitute an obligation or agreement, express or implied.

Recognizing your right to decline the sale of your products to dealers who do not charge the fair resale prices suggested by you, we declare it to be our intention to observe the fair resale prices suggested by you.

We further wish to state that we intend to retail this entire purchase within our own store and not otherwise. We do not intend to split or divide same with any other dealer. The possession of these goods, identified by mark, by other dealers, will be evidence that purchase was split.

Should we desire to dispose of these goods, in any other manner than at retail within our own store, it is our intention to first offer them to you at the original cost to us.

Yours truly,

PAR. 27. The Armand Company during the time referred to in paragraph 25 secured signed declarations of intentions in the form set out in paragraph 26 hereof and also during the same period of time directed its salesmen to secure and it secured through them written and oral declarations of intentions, from dealers to whom it sold its products, in the following form:

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DECLARATION OF INTENTION

The undersigned hereby declare that they intend to resell the within order of merchandise at the fair resale prices suggested by The Armand Company. This declaration is not purposed to be, is not, and is not to be construed as, an agreement, expressed or implied and imposes no obligation whatsoever.

To be signed by buying firm * * *.

In its circular letter, numbered 103, which The Armand Company wrote to its salesmen on August 18, 1920, instructing them as above set forth, was the following paragraph containing a reference to the last mentioned form of declaration of dealers' intentions:

5. You may lawfully inquire, prior to sale, whether a dealer intends to resell at the fair resale prices suggested by the company. You may lawfully suggest that a dealer write the following declaration of his intention upon the order form; to wit (here follows the above form of declaration of intention).

During the same period of time that it was directing its salesmen to secure declarations of intention from dealers as above set forth, The Armand Company, on the other hand, instructed them that it was unlawful to effect any agreement with dealers whether by word of mouth, or written and implied from the attending circumstances, whereby resale prices are fixed and maintained; that an unlawful, implied agreement might arise if the salesmen asked a dealer to give assurance that he would maintain the suggested resale prices fixed by The Armand Company, or if the salesmen stated to a dealer that The Armand Company would sell its products to him only if he would maintain the suggested fixed resale prices.

PAR. 28. It is and has been the practice of The Armand Company during all the times since the year 1919 frequently from time to time to publish the part of its merchandising policy set forth in paragraph 25 hereof to the wholesale and retail dealers in the drug trade which included the declaration to the effect that The Armand Company declined to sell to dealers who do not charge the resale prices suggested by it, and it was also the practice of The Armand Company to inform the particular dealers from whom it requested a signed declaration of intention during the period above mentioned, as set forth above, that upon receipt of a satisfactory declaration of the dealer's intention his order for Armand products would have The Armand Company's most prompt and interested attention.

PAR. 29. The president of Robert Stevenson & Co., a corporation which was doing business in Chicago as a wholesale druggist, testified that his company was engaged in the sale of the Armand products and that there was a time when The Armand Company did not fill his company's orders; that they wrote The Armand Company to find out why they did not fill them and that a letter was received

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from The Armand Company on June 29, 1921, following the above inquiry from Robert Stevenson & Co.

The letter from The Armand Company to Robert Stevenson & Co. of June 29, 1921, is as follows:

GENTLEMEN: On June 4th, we declared our merchandising intentions, and advised that we would accept no further orders from any jobber who failed to supply us with a declaration of his intentions, which was satisfactory to us.

If you anticipate ordering Armand goods any time in the future, it might be well for you to reply to our letter, as no attention would be paid to orders except as we can refer to a satisfactory response to our registered letter of June 4th.

Copy of June 4th letter enclosed.

The following is a copy of the letter of June 4th, which was enclosed with letter of The Armand Company of June 29, 1921, to Robert Stevenson & Co.:

We submit for your information the following declaration of our merchandising intention:

We will not accept business from, nor recognize as a jobber of Armand products, any dealer who in reselling allows either more than 2% discount in quantities amounting to \$24 and less or more than 5% discount in quantities amounting to \$24 and more. Likewise, we will not accept business from any other dealers who do not charge the fair resale prices suggested by us.

The Armand Company does not request or effect any agreements, whether express or implied, with its dealers, relating to resale prices. Buyers are entirely free to resell as they please. But, The Armand Company will exercise its constitutional right to decline sales to any dealer who either does not charge the fair resale prices suggested by it or resells to other dealers who do not charge such prices.

Very truly yours,

THE ARMAND COMPANY,
By ————, *President.*

UNDER NO CIRCUMSTANCE WILL ANY FURTHER OR OTHER ORDER BE ACCEPTED BY US FROM YOUR HOUSE UNTIL WE RECEIVE AN ACKNOWLEDGMENT OF THIS LETTER, WITH A STATEMENT OF YOUR PRESENT INTENTIONS, OR A CONFIRMATION OF THE DECLARATION THAT YOU PREVIOUSLY VOLUNTEERED.

You understand that we recognize your right to sell your present and any future stock of Armand Powder that you may own, at any price you please, and offer any discount you choose.

We ask you in turn to recognize our right to refuse to sell you if you give greater discounts than 2% in less than \$24 quantities, or if you give greater discounts than 5% in quantities of \$24 and over.

Paragraph one gives the Law for your side, and Paragraph three gives it for us. WE INTEND TO TAKE FULL ADVANTAGE OF THE LAW ON OUR SIDE, WHICH PERMITS US TO REFUSE TO SELL ANYONE WHO IGNORES OUR PUBLISHED AND SUGGESTED FAIR JOBBING DISCOUNTS.

Sincerely,

THE ARMAND COMPANY.

(Capitals same as in original.)

PAR. 30. Following the inquiry of Robert Stevenson & Co. made to The Armand Company and the reply of The Armand Company set forth in paragraph 29 above, Robert Stevenson & Co. signed the declaration of intention, which was requested of them by The Armand Company as to their intentions in the resale of Armand products, to the effect that they intended to resell at the suggested resale prices and thereafter The Armand Company filled their orders and sold them the Armand products.

PAR. 31. The Stewart & Holmes Drug Co. is a wholesale druggist in Seattle, Wash., and the only wholesale druggist in Seattle handling complete lines of goods. Its selling territory extends over the entire Northwest, including Idaho, and their retail dealer customers in general drug merchandise alone, excluding other retail dealer customers, number around eight hundred. Its gross sales of merchandise are annually about \$4,500,000.

The Stewart & Holmes Drug Co. buys annually about \$15,000 worth of Armand products from The Armand Company. In the first half of the year 1922 and prior to 1922 for several years Stewart & Holmes were regularly buying the Armand products from The Armand Company. At some time in 1922 Stewart & Holmes sold the Armand goods to a retail dealer who operated a cut-rate drug store in Yakima, Wash., and that incident caused an argument between Stewart & Holmes and the representative of The Armand Company which resulted in the refusal by The Armand Company to sell Armand products to Stewart & Holmes for a period of about six months or more beginning in 1922.

During the period in which Stewart & Holmes were unable to buy from The Armand Company, the latter company wrote a letter to Stewart & Holmes, on November 24, 1922, in which, among other things, was the following:

So far as I know your house has never yet given us a friendly hearing in the course of which you had from us a full statement of the Armand merchandising policy. It is my intention that you shall have another such opportunity if you care to avail yourselves of it when Gibson makes his next trip west.

It might be that after such an interview you would not care to handle Armand any more. It is possible that we might decide we did not wish to sell you, and it is altogether likely that after such an interview we may both desire to do business each with the other to our mutual satisfaction and advantage for the years to come.

About thirty to sixty days after the receipt of the above letter by Stewart & Holmes, Mr. Chet V. Gibson, the sales manager for The Armand Company who was referred to in the letter met in Seattle, Mr. Schrader, who had absolute charge of the buying of toilet goods

for Stewart & Holmes and they discussed the question of the resumption of the buying of Armand products from The Armand Company by Stewart & Holmes.

Stewart & Holmes had been accustomed to receiving communications frequently from The Armand Company stating their sales policy, as it is printed on The Armand Company's order forms, but at the above interview with Mr. Schrader, Mr. Gibson stated the whole Armand merchandising policy to Mr. Schrader and demanded that Stewart & Holmes agree to do certain things, if they wanted to buy again from The Armand Company. He told Mr. Schrader that The Armand Company wanted Stewart & Holmes not to sell more than one dozen at a time of an item of Armand products to a retail dealer and explained that the reason was that The Armand Company was afraid, if a larger quantity was shipped, the retail dealer would use them for sale purposes, and Mr. Gibson also explained that limiting the sale to only one dozen was to prevent the person or store from having such a quantity that they would be able to sell to price cutters or to others who could not otherwise get them; that The Armand Company wanted Stewart & Holmes not to sell to department stores because The Armand Company desired their own salesmen to call on department stores and thereby obtain from them larger orders than Stewart & Holmes would be able to get for Armand products; that The Armand Company wanted Stewart & Holmes not to sell to beauty parlors and not to sell to any general merchandise store in a town where there was a drug store, because they wanted to keep the merchandise in the hands of the retail drug trade; that if there was no retail druggist, Stewart & Holmes could sell a general merchandise store; and Mr. Gibson said if Stewart & Holmes would live up to those things, that The Armand Company would again sell them the Armand products.

When Mr. Gibson made the above statement to Mr. Schrader the latter informed Mr. Gibson that Stewart & Holmes Drug Co. would live up to those things that Mr. Gibson had demanded with respect to the resale of the Armand products by Stewart & Holmes, and he gave an order to Mr. Gibson for Armand products which was accepted by Mr. Gibson.

PAR. 32. The Stewart & Holmes Drug Co. during all the times prior to and since 1922 has sold and now sells the toilet goods, face powders, etc., manufactured by Coty, Houbigant, and other competitors of The Armand Company to any retail distributor, regardless of the nature of the distributor's business, and without inquiring at what price the distributor has resold such products or at what

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prices the distributor intends to resell them. Stewart & Holmes have sold the products of the said competitors to department stores, among other purchasers. It is and it has been the policy of Stewart & Holmes to sell toilet goods of all kinds to department stores, except the Armand products since it resumed buying from The Armand Company, as above set forth.

After Mr. Schrader made the agreement with The Armand Company through Mr. Gibson to sell the Armand products in accordance with the demands of The Armand Company above mentioned, and Stewart & Holmes were reinstated as direct buyers from The Armand Company, he instructed the sales manager of Stewart & Holmes that they were not to sell Armand products to department stores and the sales manager instructed the sales force not to sell the Armand products to department stores, and since that time Stewart & Holmes have not sold the Armand products to department stores or to any retail dealers in toilet goods except retail druggists, excepting in small towns where there is no retail druggist, in which cases Stewart & Holmes sells Armand products to general merchandise stores. Since said agreement with The Armand Company, Stewart & Holmes have not sold the Armand products to any retail dealer in quantities of more than one dozen of any one item, excepting in a few instances to certain retail dealers in Alaska, and they have not knowingly sold the Armand products to any dealer who would cut the suggested retail prices of The Armand Company.

In order to prevent the sale of the Armand products to retail dealer price cutters after the said agreement with Mr. Gibson, Mr. Schrader informed the order department of Stewart & Holmes, which checks out the merchandise, to guard against it and for that purpose Stewart & Holmes keep a record of legitimate drug dealers in the Pacific Northwest to whom they sell the Armand products and also keep a list of the dealers to whom they do not wish to sell the Armand products and they look up those lists before they fill an order and if they find on the list a price-cutter, a department store, or some store other than a drug store they stop the order and mark the item "temporarily out."

Ever since the Stewart & Holmes Drug Co. made the said agreement with The Armand Company and were reinstated on the direct buying list of The Armand Company, they have been buying the Armand products from The Armand Company on the above agreement and understanding.

PAR. 33. Katz Brothers Drug Co. and the Katz Drug Co. were separate cut-price retail drug stores in Kansas City, Mo., conducted as separate organizations prior to 1926 by two brothers named Katz,

who have merged their separate businesses and conducted what was notoriously a cut-price retail drug store since about the year 1926 under the name Katz Drug Co.

In 1921 and 1922 the Katz Drug Co. and Katz Brothers Drug Co. were selling Armand products at the retail prices suggested by The Armand Company. On or about September, 1922, Katz Brothers Drug Co. and the Katz Drug Co. sold the Armand products at other than the retail prices suggested by The Armand Company. The Armand Company was advised by its representatives of these sales at cut prices and thereafter cut off Katz Brothers Drug Co. and the Katz Drug Co. from buying the Armand products from it.

PAR. 34. After The Armand Company cut off the Katz Drug Co. and Katz Brothers Drug Co. from buying direct from it, in September, 1922, The Armand Company "drew a ring" around Kansas City, Mo., and for a certain period of time directed the McPike Drug Co., wholesale druggists in Kansas City, Mo., and a respondent named herein, not to fill orders from retail dealers in Kansas City out of their stock on hand, but to send such orders direct to The Armand Company for attention, in order to prevent Armand products ordered and purchased by said retail dealers being sold by the retail dealer purchasers to Katz Brothers Drug Co., or to the Katz Drug Co., and the said wholesale dealers sent orders received by them from retail dealers in Kansas City to The Armand Company, and did not fill the orders out of the stock they had on hand.

The Katz Brothers Drug Co. were cut off The Armand Company's buying list in September, 1922, and in 1925 after they were off the direct buying list for two or more years, the president of The Armand Company called to see Mr. Katz, and three months after that interview the Katz Brothers Drug Co. resumed buying direct from The Armand Company and they have since then sold the Armand products at the suggested prices of The Armand Company.

PAR. 35. Fuller-Morrison & Co., wholesale druggists of Chicago and a respondent named herein was selling the Armand products in 1922. They were at a previous time cut off from buying direct from The Armand Company. A witness, who was the buyer of Fuller-Morrison & Co. in 1922, testified that he remembered an order from Carson, Pirie, Scott & Co., a Chicago department store, covering a number of items, including some items of Armand products and that Fuller-Morrison wrote and sent a letter to The Armand Company on September 28, 1922, regarding the omission of the Armand products in filling the order, as follows:

GENTLEMEN: Carson, Pirie, Scott & Company recently included in their regular drug order several items of your manufacture which were omitted, believing

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that you did not care to have us supply Armand goods on their orders. They seem somewhat peeved about this and do not understand why we will not supply them.

Are we doing the right thing in refusing to sell them Armand goods?

Very truly yours,

On or about May 7, 1923, Mr. J. W. Morrison, president of Fuller-Morrison Co. of Chicago, in an interview with a representative of the Federal Trade Commission, stated he believed The Armand Company had gone too far with their policy in respect of retail price maintenance because they had instructed Fuller-Morrison not to sell cosmetics to Carson, Pirie, Scott & Co., one of their good customers; that The Armand Company did not instruct him that way directly but that they gave him to understand if he did sell them he would be cut off; that it was against the policy of The Armand Company for jobbers to sell to department stores, the department stores being price cutters and that that was a material factor with The Armand Company's not allowing Fuller-Morrison to sell Carson, Pirie, Scott; that Carson, Pirie, Scott were price cutters.

PAR. 36. Sears, Roebuck & Co., of Chicago, have conducted a retail mail-order business throughout the United States for 35 years and during the last four years or more have operated large retail stores in various cities. In 1929 they had 45 to 50 such retail stores in the larger cities.

In 1925 Sears, Roebuck were selling the cosmetic lines of various manufacturers of such toilet goods but were not selling the Armand products. The Armand products were catalogued in their mail-order business in the fall of 1926 and at that time the Armand Cold Cream Powder, the suggested retail price of which was \$1 was listed at 83 cents plus delivery charges and the Armand Bouquet Powder, the suggested price of which was 50 cents was listed at 42 cents plus delivery charges.

In 1926 while the said Armand products were listed at the above prices in Sears, Roebuck's mail-order catalog and sold by them, they were also being sold by Sears, Roebuck in their retail stores at the prices of 83 cents and 42 cents, respectively, with no charge for delivery.

In the spring catalog of 1927 Sears, Roebuck listed the said products at 89 cents and 45 cents plus delivery charges.

While the said products were being listed and sold at the above prices, Sears, Roebuck were not buying them from The Armand Company. The Armand Company refused to sell to Sears, Roebuck & Co.

In their mail-order catalog for the fall and winter of 1927 and in the spring catalog of 1928, Sears, Roebuck did not list the said products, because they were not able to buy the products direct from The Armand Company and buying them elsewhere had to pay a higher price which took away the profit from their sale and made it inadvisable to list the products for sale, although Sears, Roebuck had sufficient demand for the sale of the products.

From 1925 to a short time prior to the issuance of the Sears, Roebuck mail-order catalog for the spring and fall of 1927, the buyer of the toilet goods for Sears, Roebuck had frequent visits from the president of The Armand Company, and conversations with him over the telephone during which the taking on of the Armand line by Sears, Roebuck was discussed between them and following those interviews and discussions the representatives of Sears, Roebuck on or about April 27, 1927, decided to put the said products on sale in Sears, Roebuck's retail stores at the suggested retail prices of The Armand Company and on and after about April 27, 1927, to the present time those products have been sold in the Sears, Roebuck retail stores at the prices suggested by The Armand Company for their sale at retail to the consumer.

On April 27, 1927, Sears, Roebuck made their first purchase of Armand products from The Armand Company and they have since said time continued to purchase them from The Armand Company for the account of their retail stores.

The buyer for Sears, Roebuck testified that in his talk with the president of The Armand Company, immediately prior to the time when he ordered the Armand products direct from The Armand Company for the retail stores, he consented to sell the products in the retail stores at the suggested prices of The Armand Company, and at that time he further testified that the president of The Armand Company stated that he would fill the order of Sears, Roebuck for the retail stores and that Sears, Roebuck raised its prices for the products in their retail stores to the prices suggested by The Armand Company, but did not raise its prices in the retail stores prior to his talk with the president of The Armand Company.

The spring catalog of Sears, Roebuck is gotten out in the preceding January and in the catalog for the spring of 1927 the Armand products were listed, as above stated, at 89 cents and 45 cents plus delivery charges.

The president of The Armand Company, had objected to the listing of the Armand products in the Sears, Roebuck catalog in his discussions with the Sears, Roebuck buyer and at or about the time

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when Sears, Roebuck placed their first order with The Armand Company for its products, on April 27, 1927, stated to the buyer that he would not sell the Armand products to Sears, Roebuck for the account of their mail-order business while they were listed at the prices above set forth, but that he would sell them to Sears, Roebuck for the account of their retail stores if the accounts of the mail-order business and the retail stores could be kept separately and thereupon Sears, Roebuck purchased the products as above stated for the account of their retail stores, but did not purchase them for the account of their mail-order business.

Following the purchase of the Armand products for the retail stores on April 27, 1927, the products were not listed by Sears, Roebuck in their mail-order catalog for the fall of 1927 and Sears, Roebuck discontinued listing them in its mail-order catalogs until the fall catalog of 1928.

In the fall catalog for 1928 the said Armand products were listed at 83 cents and 39 cents, respectively, plus delivery charges, and the Armand products for the account of the mail-order business were purchased elsewhere and not from The Armand Company. In a later catalog the said Armand products were listed at 95 cents and 45 cents, respectively.

The president of The Armand Company objected to the listing at the prices of 95 cents and 45 cents and after a discussion between him and the buyer for Sears, Roebuck, who explained that a customer ordering by mail remitted the price of 95 cents or 45 cents by money order at a cost of 3 cents for a money order and paying 2 cents for postage, actually paid \$1 and 50 cents for the products, respectively, The Armand Company in 1929 began to sell Sears, Roebuck for the account of their mail-order business and the Armand products continue to be listed in Sears, Roebuck catalog at 95 cents and 45 cents, respectively.

During the time Sears, Roebuck were unable to purchase from The Armand Company and purchased Armand products elsewhere they had to pay their seller a profit which made the prices of the products in excess of the prices at which they were bought from The Armand Company, and at times Sears, Roebuck were unable to purchase the products in quantities sufficient for the demands of their trade and were able to fill only about 60 percent of their orders for Armand products.

During all the times above mentioned and referred to the policy of The Armand Company as to the sale of its products at its suggested retail prices was known by Sears, Roebuck and by the trade generally.

PAR. 37. J. Bacon & Sons conduct a large dry goods department store in Louisville, Ky., and have been in business since 1846. They were selling the Armand products. About the year 1920 they published an advertisement offering the Armand products at prices lower than those suggested by The Armand Company. Following this advertisement, The Armand Company wrote Bacon & Sons a letter regarding the advertisement, in consequence of which Bacon & Sons stopped buying and selling the Armand products.

After J. Bacon & Sons discontinued the sale of Armand products the salesman of The Armand Company was in the habit of coming in to see them and from time to time discussed at length their resumption of buying the products. In 1924, Bacon & Sons finally told the Armand salesman to go ahead and ship the products. The Armand salesman then asked them if they would agree to sell the Armand products at the prices suggested by The Armand Company to which Bacon & Sons agreed and gave The Armand Company an order for the products and J. Bacon & Sons have since 1924 sold Armand products at the suggested resale prices.

J. Bacon & Sons can sell The Armand Cold Cream Powder, the suggested retail price of which is \$1, at 79 cents and get a profit of 40 percent, and they have sold the products of competitors of The Armand Company at less than their suggested resale prices, and have never been threatened by them to be cut off from buying their products but The Armand Company's salesman told them if they sold Armand products at less than the suggested prices, they would be cut off from buying Armand products from The Armand Company.

PAR. 38. Borum Brothers are wholesale druggists in Los Angeles, Calif. Prior to about February 11, 1929, R. C. Miner was, for about the four years immediately preceding said date, their credit manager and was also formerly their sales manager besides. Several years before 1929 Borum Brothers had been on the direct buying list of The Armand Company and had been taken off the list and The Armand Company had refused to sell to them.

About the fall of 1928 a representative of The Armand Company called on Borum Brothers and told their buyer The Armand Company would sell them direct if they would maintain the prices and Borum Brothers and their buyer knew at that time that The Armand Company had a strict resale price policy in effect.

About three months or more prior to February 19, 1929, they were again placed on the direct buying list of The Armand Company and since that time bought Armand products from The Armand Company.

R. C. Miner, above mentioned, began to operate a retail cut price drug store in Los Angeles shortly prior to February 11, 1929, known

as The Thrifty Cut Rate Store and he admitted that when he started in business he was financed to some extent by Borum Brothers.

R. C. Miner, prior to July 16, 1929, sold the Armand products at cut prices, and he was generally known as a price cutter. Since about July 16, 1929, after an interview with a representative of The Armand Company he has been buying from The Armand Company direct and selling the product at the suggested prices of The Armand Company.

On and after February 11, 1929, while Mr. Miner was selling Armand products at cut prices he was buying them from a jobber. At first he refused to tell the name of the jobber, saying that it would do injury to the witness to name him. He finally said the jobber was Borum Brothers and that Borum Brothers were buying direct from The Armand Company. After R. C. Miner admitted in this proceeding that he was financed by Borum Brothers, Norman Levin, the buyer for Borum Brothers, was called to testify and on being asked if Borum Brothers had financed R. C. Miner in his business refused to answer, saying that to answer the question would hurt Borum Brothers very materially.

Arthur Braunstein has been conducting a retail cut-rate drug store in Los Angeles since August, 1928, and selling toilet goods made by The Armand Company and other manufacturers. He sells the Armand products at cut prices and first bought the Armand products from Borum Brothers and from the J. K. Hornbein Co., of Los Angeles. The J. K. Hornbein Co., wholesale druggists, cannot buy from The Armand Company, but buys the Armand products if and where they can buy them. Everything Braunstein bought from Hornbein was shipped to him in his own name and everything he bought from Borum Brothers was shipped to him in some fictitious name but not in that way at his request or by his consent, and he accepted them under the fictitious name from Borum Brothers because he knew it was done for the reason that he was selling at cut prices.

The Smile Store, a cut-rate drug store in Los Angeles sells toilet goods of various manufacturers, including the Armand products and buys the Armand products from J. K. Hornbein Co. and from Borum Brothers, of Los Angeles. When The Smile Store buys the Armand products from Borum Brothers they are billed to it under fictitious names and this manner of billing covers all the goods bought from Borum Brothers, including the Armand products, under an agreement concerning all the goods that might cause any controversy between Borum Brothers and the different manufacturers, such as The Armand Company, that suggest a regular price for the sale of their goods.

PAR. 39. The practices of The Armand Company in asking and obtaining from purchasers or prospective purchasers of its products written declarations of their intentions, signed by the purchasers in the forms set forth in paragraphs 26 and 27 hereof, with respect to the sale of the Armand products, was abandoned by The Armand Company on or about July 1, 1922, and purchasers who had previously signed such declarations were thereafter notified by The Armand Company that such declarations then outstanding were null and void.

PAR. 40. The declarations of intention, mentioned and referred to in paragraphs 25 to 30, inclusive, and 39 hereof, signed by purchasers and returned by them to The Armand Company and the declarations of intention to the same effect made orally to The Armand Company's agents and employees at the solicitation of the latter, constituted and they were agreements with The Armand Company on the part of such dealers, who were many in number, to sell the Armand products bought from The Armand Company in each and every subsequent transaction, in accordance with such declarations, and among other things to sell them at the prices suggested by The Armand Company. Said agreements were in force and effect approximately two and a half years, from early in the year 1920 to on or about July 1, 1922.

PAR. 41. The purchasing of Armand products from The Armand Company by Fuller-Morrison & Co., wholesale druggists of Chicago, during the years 1922 and 1923, was made under the agreement or understanding referred to in paragraph 35 hereof, between Fuller-Morrison & Co., and The Armand Company, whereby Fuller-Morrison & Co. in consideration of the sale of Armand products to them by The Armand Company, agreed with The Armand Company to refuse and they did refuse to resell the Armand products to retail department stores and to retail stores, who in reselling the products did not charge the fixed retail prices to consumers which were suggested by The Armand Company.

PAR. 42. On or about January 24, 1923, The Armand Company caused the Stewart & Holmes Drug Co. of Seattle, Wash., to enter into an agreement or understanding with it, as set forth in paragraphs 31 and 32 hereof and which is still in effect, whereby the Stewart & Holmes Drug Co. have, among other things, agreed not to sell the Armand products bought by them to retail dealers who resell Armand products at less than the fixed prices suggested by The Armand Company, and in consequence and in pursuance of said agreement and in cooperation with The Armand Company in maintaining fixed resale prices on Armand products, the Stewart &

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Holmes Drug Co. as a means of insuring that they or their employees will not sell the Armand products to price cutters, among other things, keep and have kept a list of those retail dealers in their sales territory known as price cutters to whom they have refused since said agreement and still refuse to sell the Armand products because they are price cutters and sell Armand products at prices less than the fixed prices suggested by The Armand Company for their resale.

PAR. 43. In the year 1924 The Armand Company entered into an agreement as set forth in paragraph 37 hereof, with the firm of J. Bacon & Sons of Louisville, Ky., retail dry goods dealers, whereby it was agreed that The Armand Company would thereafter sell its products to Bacon & Sons and that the latter firm would resell them to consumers at the suggested prices fixed for their resale by The Armand Company, and the said agreement has been in full force and effect at all times since the year 1924.

PAR. 44. In 1925 The Armand Company entered into an agreement with the Katz Brothers Drug Co. and have continued the said agreement since 1926 with the Katz Drug Co. successors of the Katz Brothers Drug Co. as set forth in paragraphs 33 and 34 hereof, whereby the Katz Drug Co. and its predecessors have since sold the Armand products at the suggested prices fixed by The Armand Company and were restored to The Armand Company's list of direct buyers.

PAR. 45. On or about April 27, 1927, The Armand Company made an agreement as set forth in paragraph 36 hereof, with Sears, Roebuck & Co. of Chicago, Ill., whereby it sold its products to the latter company for resale at the suggested, fixed prices of The Armand Company, in the retail stores of Sears, Roebuck & Co., and in 1929 made another agreement with Sears, Roebuck & Co. whereby it agreed to sell its products direct to Sears, Roebuck & Co. for the account of their sale in the mail-order business of the latter company on the understanding that the Armand products would be resold in the said mail-order business at prices which were substantially the suggested prices fixed for their resale by The Armand Company. The foregoing agreements between The Armand Company and Sears, Roebuck & Co. have since said dates been in full force and effect.

PAR. 46. On or about the last part of the year 1928 or the early part of the year 1929, The Armand Company entered into an agreement or understanding with Borum Brothers, wholesale druggists of Los Angeles, Calif., as set forth in paragraph 38 hereof, whereby

The Armand Company reinstated Borum Brothers on its direct list of purchasers and agreed to sell the Armand products to them thereafter, and Borum Brothers agreed to sell the Armand products at the said suggested fixed prices of The Armand Company.

PAR. 47. The Armand Company systematically represented to its wholesale and retail dealer purchasers and prospective purchasers that it would refuse further sales to those who cut its suggested fixed resale prices and it did accordingly refuse further sales when it decided it was necessary for the carrying out of its merchandising policy which had for its chief objective the maintaining of the wholesale and resale fixed prices suggested by it for its products.

PAR. 48. The direct effect and result of the above acts and practices of The Armand Company have been and now are to suppress competition among wholesalers and between retail dealers in the distribution and sale of The Armand Company products; to constrain wholesalers and retail dealers to sell said products at the wholesale and retail dealer prices fixed by The Armand Company; and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said products under methods of free competition.

CONCLUSION

The practices of the said Armand company under the conditions and circumstances described in the foregoing findings are to the prejudice and injury of wholesale and retail dealers and are to the prejudice and injury of the public and are unfair methods of competition in commerce and constitute a violation of 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."

ORDER OF DISMISSAL AND TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, answer of respondents, testimony and evidence introduced, and briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent, The Armand Company, Inc., has 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",

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It is now ordered, That respondent, The Armand Company, Inc., its officers, agents, representatives, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Entering into or procuring either directly or indirectly from wholesale or retail dealers contracts, agreements, understandings, promises or assurances that respondent's products, or any of them, are to be resold by such wholesale or retail dealers at prices specified or fixed by The Armand Company, Inc.

(2) Entering into or procuring either directly or indirectly from wholesale dealers contracts, agreements, understandings, promises, or assurances that Armand products are not to be resold by such wholesalers to price-cutting retail dealers.

It is further ordered, That the respondent, The Armand Company, Inc., shall, within 30 days after the service of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order to cease and desist.

It is further ordered, That this proceeding be, and the same hereby is dismissed as to all the respondents above named, excepting The Armand Company, Inc., its officers, agents, representatives, and employees.²

² For list of respondents, see *supra*, page 218.

Order

IN THE MATTER OF
MADISON MILLS, INCORPORATEDMODIFIED ORDER TO CEASE AND DESIST¹*Docket 1776. January 31, 1933*

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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", and the Commission having heretofore, to wit, on December 14, 1931, entered and served its order upon respondent requiring it to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that paragraph 3 of the said order should be rescinded,

It is now ordered, That paragraph 3 of the cease and desist order heretofore issued in this proceeding on the 14th of December, 1931, be and the same is hereby rescinded.

¹ The complaint, findings, and original order in this matter, relating to respondent's practices of shipping shirts different in designs, patterns, etc., from those ordered, c.o.d. without privilege of inspection, and without giving customer notice of exhaustion of stock of particular garment ordered and opportunity for further selection; of falsely and misleadingly representing that dissatisfied customer's money would be returned "at once, without question"; and of making unwarranted and misleading use of such words as "Mills", "Shirt Manufacturers", etc., are reported in 15 F.T.C. 375 et seq.

The original order (omitting the usual formal demand for report of compliance within a specified period) required respondent, its agents and employees, in connection with the advertisements, sale or distribution by it in interstate commerce of shirts, to cease and desist as follows:

(1) Where shipments are made to customers c.o.d. without privilege of inspection, from representing, directly or indirectly, to purchasers or prospective purchasers that it will ship shirts of the designs, patterns, or styles selected and ordered by the said purchasers, unless and until it refrains from substituting shirts of designs, patterns or styles of its own selection different from those by the said purchasers so selected and ordered.

(2) From representing, directly or indirectly, to prospective purchasers that if the said purchasers are dissatisfied, the purchase price will be refunded at once without question, unless and until it actually does make prompt refunds whenever a shirt is returned by a dissatisfied customer.

(3) From directly or indirectly representing, through the use of such phrases as "Madison made shirts", "Mills", "shirt manufacturers", "factory to wearer price", that it is the manufacturer of products sold and distributed by it until such time as said respondent does actually own, operate, or control a manufactory wherein are fabricated or made the shirts which it so sells and distributes.