

IN THE MATTER OF
SOUTHERN NEW YORK CANDY DISTRIBUTORS ASSO-
CIATION OF BINGHAMTON, NEW YORK, ET AL.

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

Docket 2292. Complaint, Feb. 4, 1935—Order, May 31, 1935

Consent order requiring respondent association, respondent individuals joined in their individual capacities, and as officers thereof and members of its executive committee, and respondent member corporations, firms and individuals, and their respective officers, directors, etc., forthwith to cease and desist, in connection with the purchase or sale of confectionery, candy, or allied products in interstate commerce, from—

- (a) Using any of the methods of competition alleged in the complaint against them, namely, uniting in a common course of action, and cooperating and confederating together and with others to prevent competing dealers from obtaining confectionary and allied products directly from the manufacturers, establish respondent members as a class of "recognized" brokers, distributors and wholesalers of said products in the trade territory involved, and fix and establish uniform prices to be observed by said members in the sale of said products and prevent others from selling at lower prices, through, as more particularly therein set forth—
- (1) Exacting and procuring pledges and promises to adhere to and enforce such program from members and manufacturers;
- (2) Printing and publishing so-called "white lists" of "recognized" dealer members, and supplying same to aforesaid manufacturers and inducing and compelling latter to decline dealings with dealers and others not included therein;
- (3) Using boycott and threats and other united action against manufacturers, dealers, and others, to induce compliance with their said program;
- (4) Holding meetings to devise means of exerting influence to induce conformance by manufacturers, brokers and others;
- (5) Informing and advising manufacturers of the names of recognized dealers in the territory concerned and of their program, and purpose to insist thereon, and that direct sales to nonrecognized dealers, or failure to conform, would be considered unfriendly acts;
- (6) Denying membership and recognition to nonconforming dealers and otherwise disciplining them; and
- (7) Using and engaging in other cooperative acts and methods in promoting and carrying out their aforesaid program, agreement and undertaking; and from
- (b) Combining, conspiring or uniting in a common course of action, and cooperating and/or confederating together, among themselves and/or with others to prevent competing dealers in confectionery, candy or allied products from obtaining such products directly from the manufacturers;
- (c) Publishing so-called "white lists" containing the names of "recognized" dealer members of respondent association, so as to include therein only so-called legitimate, regular or "recognized" dealers, brokers, distributors or wholesalers of said products;

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- (d) Conspiring or uniting to fix and/or establish uniform prices at which members of respondent association or others should sell such products; or
- (e) Suppressing in any other way competition in price in the sale and distribution thereof in the trade area involved, or in any other area.

Mr. Edward L. Smith for the Commission.

Chernin & Gold, of Binghamton, N. Y., for respondents generally except Charles H. Walling and Oneonta Grocery Co., and *Mangan & Mangan* of Binghamton, N. Y., for Hewit Pharmacies, Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that each and all the parties named in the caption hereof, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Southern New York Candy Distributors Association of Binghamton, New York, is a nonprofit corporation incorporated under the laws of the State of New York, whose membership is composed of individuals, partnerships, and corporations with their respective places of business in the cities of Binghamton, Oneonta, Walton, and/or Norwich, State of New York, engaged as brokers, distributors, and wholesalers in selling confectionery, candy, and allied products to retail dealers located in said State and in neighboring States. Said Southern New York Candy Distributors Association of Binghamton, New York, will hereinafter be referred to as the "association".

Respondents Frank G. Slauson, Frank L. Brooks, Floyd L. Maines, Roger J. Williams, and L. P. Laughlin are, respectively, president, vice president, secretary-treasurer, and members of the executive committee of said association, in charge of conducting and administering its activities and affairs.

The members of the association are as follows: Respondent Hewit Pharmacies, Inc., a corporation organized under the laws of the State of New York, and doing business under the trade name and style, Binghamton Wholesale Drug, with its office and principal place of business located at Binghamton, N. Y.; respondent Binghamton Tobacco Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business

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located in the city of Binghamton, N. Y.; respondent Brooks Candy Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Binghamton, N. Y.; respondent M. B. Cordon, an individual, whose place of business is located in the city of Binghamton, N. Y.; respondent Isadore Finkelstein, Harold Finley and Abe Finley, partners, doing business under the trade name of Finley's Wholesale Supply Co., with their place of business located in the city of Binghamton, N. Y.; respondent Key Stone Tobacco Co., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Binghamton, N. Y.; respondent Floyd L. Maines, an individual doing business under the trade name and style of Maines Candy Co., with his place of business located in the city of Binghamton, N. Y.; Lewis Laughlin, an individual doing business under the trade name and style of Vosbury & Laughlin, with his place of business located in the city of Binghamton, N. Y.; respondent H. Raymond Almy, an individual doing business under the trade name and style of Washington Distributing Co., with his place of business located in the city of Binghamton, N. Y.; respondent Roger J. Williams, an individual, with his place of business located in the city of Binghamton, N. Y.; respondent Charles H. Walling, an individual, with his place of business located in the city of Oneonta, N. Y.; respondent Oneonta Grocery Co., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Oneonta, N. Y.; respondent Rosenfeld & Sons, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in the city of Walton, N. Y.; and respondent Charles L. Littlefair and F. M. Wilcox, partners, doing business under the trade name and style of Wilcox & Littlefair, with their place of business located in the city of Norwich, N. Y.

PAR. 2. The said confectionery, candy and allied products industry includes among its products certain widely known nationally advertised articles for which the consuming public maintains a consistent demand. These nationally advertised confectionery products are manufactured in many different States of the United States and the conduct of the aforesaid business requires the dealing in all or most of such products.

Respondent members of the association purchase the aforesaid products, confectionery, candy and allied products in which they deal, directly and immediately from manufacturers thereof located

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for the most part in States other than the State of New York, and manufacturers ship said products, when so purchased, from their respective places of business in such other States to said members in the State of New York.

In the course and conduct of their aforesaid respective businesses, respondent members, but for the matters and things hereinafter set out, would be naturally and normally in competition with each other in price, and otherwise are in such competition with other individuals, partnerships and corporations also engaged in the purchase of confectionery, candy and allied products from aforesaid manufacturers located in States other than the State of New York, and the resale thereof in the State of New York and neighboring States. Respondent members, by virtue of their membership in said association designate themselves as "recognized" members as distinguished from such brokers, distributors and wholesalers of confectionery, candy and allied products in said trade area, who are not members of said association.

The respective members of the respondent association constitute a large and important part of the brokers, distributors and wholesalers in confectionery, candy and allied products in the southern New York trade area; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in such products within, to and from said trade area. Said members, as allied and banded together in said association, are enabled thereby more effectively to exercise, control and influence such trade and commerce for the promotion and enhancement of their own volume of trade and profits. The volume of consumption of confectionery, candy and allied products in said southern New York trade area, and the volume of trade and commerce dealt in by respondents in such products in, to and from said area constitute an important part of the trade and commerce of the United States in the confectionery industry. Said trade area is a large and important outlet and market for the sale of confectionery, candy and allied products by manufacturers, producers and distributors within said trade area and also by those in various other States, particularly those of the eastern half of the United States.

PAR. 3. For about one year prior to June 6, 1934, respondents united in a common course of action and cooperated and confederated together and with others to prevent said competing dealers in confectionery, candy and allied products, mentioned in paragraph 1 hereof, from obtaining confectionery, candy and allied products directly from aforesaid manufacturers thereof; to estab-

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lish respondent members as a class of "recognized" brokers, distributors and wholesalers of said products in the said southern New York trade area; to fix and establish uniform prices at which said members of respondent association should sell said products and to prevent others from selling at less prices and by and through the aforesaid means to suppress competition and especially competition in price in the selling and distribution of said products in the aforesaid territory served by respondents. To carry out the aforesaid purposes the respondents have done, among others, the following acts and things:

(a) Exacted and procured pledges and other promises of agreements from each such "recognized" dealer and each member of respondent association and from manufacturers and producers of confectionery, candy and allied products to the effect that such dealers, members, manufacturers and producers would support, adhere to and enforce the foregoing program of respondents set forth in paragraph 3 hereof.

(b) Printed and published lists (so-called "white lists") containing the names of "recognized" dealer members of said association, so as to include in said lists only so-called legitimate, regular or "recognized" dealers, brokers, distributors and wholesalers of said products, and to exclude therefrom, and thereby to identify as such, so-called "nonrecognized" dealers, brokers, distributors and wholesalers of said products, and supplied said lists to aforesaid manufacturers, and by the means and methods hereinafter set forth persuaded, induced and compelled said manufacturers to cease dealing with and to refuse to open accounts with the dealers, brokers, distributors and wholesalers so reported.

(c) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents, and to refrain from selling said products to other dealers, brokers, distributors and wholesalers who were not members of said association.

(d) Held meetings of respondent association, its members, officers and executive committee, to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing and requiring manufacturers, producers, brokers, dealers and wholesalers and others engaged in said confectionery, candy and allied products, trade and industry to abide by and adhere to said program.

(e) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, informed

and advised such manufacturers and producers of the names of said "recognized" dealers in said southern New York trade area, and of respondents' purpose and determination to insist upon and require such manufacturers and producers to distribute their products through the medium of said "recognized" dealers exclusively, and in conformity with the aforesaid program of respondents; and also advised such manufacturers and producers that their sale and distribution of confectionery products direct to certain nonrecognized dealers and purchasers, or their failure to conform to aforesaid program in the distribution of their products would be considered by respondents and such "recognized" dealers as "unfriendly" acts against respondents and such "recognized" dealers.

(f) Denied membership in respondent association and such "recognition" of dealers who failed to support, abide by or carry out said program of respondents, and otherwise disciplined such members and dealers.

(g) Used and engaged in other acts, cooperative and concerted action, and coercive methods and practices in promoting, establishing and carrying out the foregoing program and agreement, combination, conspiracy, confederation and undertaking set forth in paragraph 3 hereof.

PAR. 4. The capacity, tendency and effect of said agreement, combination, conspiracy, confederation and undertaking, and the said acts and practices of respondents set forth in paragraph 3 hereof are and have been, in aforesaid southern New York trade area and other related or connected territory, to close and curtail sundry outlets within the State of New York for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the State of New York; to monopolize, in said respondent members and recognized dealers, the business of dealing in and distributing confectionery, candy and allied products; to unreasonably lessen, eliminate, restrain, stifle, hamper and suppress competition in said confectionery industry in the State of New York, and to deprive the purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to oppress, eliminate and discriminate against small business enterprises which were or had been engaged in selling and distributing confectionery, candy and allied products; to

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prejudice and injure the public and manufacturers, producers, dealers, brokers, distributors and wholesalers and others who did not conform to respondents' program, or who did not desire, but were compelled, to conform to said program, and to spread into States other than New York the same methods of boycott and "white-listing" employed by respondents.

PAR. 5. The above alleged acts and things done by respondent as set forth in paragraphs 3 and 4 hereof are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

Certain of the respondents herein having filed their respective answers to the complaint in this proceeding, and in and by such answers having waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said answers that they do not contest the proceeding, and having consented in and by their said answers that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon them, an order to cease and desist from the methods of competition charged in the complaint; and the other respondents having filed their respective answers to the complaint in this proceeding, and in and by such answers having waived hearing on the charges set forth in the complaint in this proceeding, and having stated in their said answers that they do not contest the proceeding; and the Commission being fully advised in the premises:

Now, therefore, it is hereby ordered, That each and every one of the respondents herein, Southern New York Candy Distributors Association of Binghamton, New York, a corporation, Frank G. Slau-son, Frank L. Brooks, Floyd L. Maines, Roger J. Williams and L. P. Laughlin, individually and as president, vice president, secretary-treasurer and members of executive committee respectively of said association; Hewit Pharmacies, Inc., a New York corporation doing business under the trade name and style of Binghamton Wholesale Drug; Binghamton Tobacco Co., Inc., Brooks Candy Co., Inc., M. B. Cordon, Isadore Finkelstein, Harold Finley and Abe Finley, partners doing business under the trade name and style of

Finley's Wholesale Supply Co., Key Stone Tobacco Co., Floyd L. Maines, an individual doing business under the trade name and style, Maines Candy Co.; Lewis Laughlin, an individual doing business under the trade name and style of Vosbury & Laughlin; H. Raymond Almy, an individual doing business under the trade name and style of Washington Distributing Co.; Roger J. Williams, Charles H. Walling, Oneonta Grocery Co., Rosenfeld & Sons, Inc., Charles L. Littlefair and F. M. Wilcox, partners doing business under the trade name and style of Wilcox & Littlefair, their respective officers, directors, agents, servants and employees, in connection with the purchase by them or by any of them of confectionery, candy or allied products in interstate commerce, and/or in connection with the sale by them or by any of them of confectionery, candy or allied products in interstate commerce, forthwith cease and desist from (1) using any of the methods of competition alleged in the complaint; (2) combining, conspiring or uniting in a common course of action, and cooperating and/or confederating together, among themselves and/or with others to prevent competing dealers in confectionery, candy or allied products from obtaining confectionery, candy or allied products directly from the manufacturers thereof; (3) publishing lists (so-called "white lists") containing the names of "recognized" dealer members of respondent association, so as to include in said lists only so-called legitimate, regular or "recognized" dealers, brokers, distributors or wholesalers of said products; (4) conspiring or uniting to fix and/or establish uniform prices at which members of respondent association or others should sell such products; (5) or in any other way suppressing competition in price in the selling and distributing of such products in the Southern New York trade area, or in any other area.

It is hereby further ordered, That the said respondents shall within 60 days from the day of the date of the service upon them of this order, file with this Commission a report or reports in writing, stating the manner and form in which they shall have complied with this order.

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IN THE MATTER OF

SARAH R. GROSSMAN, TRADING AS EYESIGHT NORMAL-
IZING COMPANY, AND SASHA R. GROSSMAN, ALIAS
ALEX R. GROSSMAN.

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

Docket 2328. Complaint, Mar. 14, 1935—Order, May 31, 1935.

Consent order requiring respondent, Sarah R. Grossman, trading as aforesaid, and respondent Sasha R. Grossman, alias Alex R. Grossman, in connection with the sale in interstate commerce, by advertisements, advertising literature, radio broadcasts, or in any other manner or means whatsoever of its so-called eye normalizing device, to cease and desist from directly or indirectly falsely representing that said device—

- (a) Will enable anyone to throw away glasses or is a new, revolutionary, scientific discovery, making unnecessary the use thereof;
- (b) Will cure or correct farsightedness, astigmatism, crosseyes, old age sight and failing vision, or, used only a few minutes a day, will cure or correct such defects;
- (c) Is an achievement of science and research, making it possible for one to enjoy perfect vision without resorting to the use of glasses, or is a scientific discovery offering persons a way out of eye trouble, and helps anyone to correct defective vision on an entirely new principle;
- (d) Is advocated in theory and principle by all internationally famous optometrists and morphologists, and is the latest and greatest discovery of research in ailments of the eye, made in the past hundred years, with thousands of happy and pleased users in all parts of the world;
- (e) Will enable one to have normal vision without glasses, and constitutes the latest sensational discovery, and that glasses may be discarded and normal vision regained; or
- (f) Is a scientific eye muscle exerciser and will help to correct nearsightedness, eye muscle trouble, weak eyes, squint eyes, and other ailments hereinbefore set forth, and that all credit for its construction, development and formulation is due to masters in optometry and morphology.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Sarah Grossman, individually and trading as Eyesight Normalizing Company, and Sasha R. Grossman, alias Alex R.