

Syllabus

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IN THE MATTER OF
THE RUBBER MANUFACTURERS ASSOCIATION,
INC., ET AL.

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

Docket 2354. Complaint, Apr. 5, 1935—Order, July 29, 1935

Consent order requiring respondent corporations, excepting respondent association, their officers, etc., in connection with the sale and offer of mechanical rubber goods, including fire hose and chemical hose, in interstate commerce, and when acting by understanding or agreement among themselves or between any two or more of them or with others, acting directly or by or through respondent association, forthwith to cease and desist from—

- (a) Fixing prices, at which said commodities would be sold;
 - (b) Fixing prices at which their wholesaler and retailer customers would be required to sell such commodities;
 - (c) Fixing prices at which they would sell, or offer to sell, such commodities to cities, States and other governmental and public agencies;
 - (d) Communicating in any manner to one another, or other manufacturers or competitors, the price at which they proposed or intended to sell commodities in the future, for the purpose and with the effect of hindering or preventing competition between and among themselves, or any two or more of them, or with others; provided that nothing herein shall prevent the disclosure of future prices in the ordinary course of business;
 - (e) Fixing uniform terms and conditions of sale under which they propose to sell such commodities, for the purpose or with the effect of hindering or preventing competition;
 - (f) Seeking to influence or persuade competing manufacturers or dealers with regard to the price at which such competitor or competitors would or should sell such commodities, for the purpose or with the effect of suppressing or hindering or preventing competition;
 - (g) Refusing to supply such commodities to any wholesaler or retailer, or other customer because he failed or refused to quote, or agree to quote, or sell at prices fixed by them; and
 - (h) Classifying buyers or prospective buyers of such commodities for the purpose and with the effect of suppressing or preventing competition among themselves, or any two or more of them, or with others; and
- Ordered further, that complaint be dismissed as to two specified individual respondents who only recently became members of the code authority for the rubber industry and did not participate in any of the activities of said authority during the time when the acts and things alleged in the complaint were done.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Edward L. Smith and *Mr. Robt. N. McMillen* for the Commission.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for respondents, who were also severally and variously represented, as

follows: *Mr. John V. Groner*, of New York City for Rubber Manufacturers Association, Inc., *A. L. Viles*, *J. D. Lippman*, *O. C. Pahline*, *A. B. Newhall*, *F. D. Hendrickson*, *R. E. Drake*, *Wm. Lichtenstein*, *B. B. Felix*, *F. Thatcher Lane*, *W. L. Finger*, *J. H. Connors*, *H. N. Young*, *C. D. Garretson*, *A. D. Kunze* and *Hamilton Abert*; *Backes & Backes*, of Trenton, N. J., for *Acme Rubber Manufacturing Co.*, *Hamilton Rubber Manufacturing Co.*, *The Home Rubber Co.*, and *Mercer Rubber Co.*; *Johnson, Clapp, Ives & Knight*, of Boston, Mass., for *Boston Woven Hose & Rubber Co.*; *Taft, Stettinius & Hollister* of Cincinnati, Ohio, for *The Cincinnati Rubber Manufacturing Co.*; *Gunnison, Fish, Gifford & Chapin*, of Erie, Pa., for *Continental Rubber Works*; *Mr. J. L. McKnight* and *Mr. F. C. Leslie*, of Akron, Ohio, for *The B. F. Goodrich Rubber Co.*; *Mr. Frederick R. Wahl* and *Mr. Harold G. Capron*, of Akron, Ohio, for *The Goodyear Tire & Rubber Co.*; *Kenefick, Cooke, Mitchell, Bass & Letchworth*, of Buffalo, N. Y., for *Hewitt Rubber Corp.*; *Zimmerman, Myers & Kready*, of Lancaster, Pa., for *Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc.*; *Pillsbury, Madison & Sutro*, of San Francisco, Calif., for *Pioneer Rubber Mills*; *Mr. Ralph L. Kryder* of Akron, Ohio, for *Quaker City Rubber Co.*; *Spence, Hopkins, Walser & Hotchkiss*, of New York City, for *The Republic Rubber Co.*; *Lowe & Dougherty*, of New York City, for *Thermoid Rubber Co.*; *Arthur & Dry*, of New York City, for *U. S. Rubber Products, Inc.*; and *MacCoy, Brittain, Evans & Lewis*, of Philadelphia, Pa., for *Whitehead Brothers Rubber Co.*

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", approved September 26, 1914, the Federal Trade Commission, having reason to believe that the Rubber Manufacturers Association, Inc., a corporation; and *A. L. Viles*, *J. D. Lippman*, *O. C. Pahline*, *A. B. Newhall*, *F. D. Hendrickson*, *R. E. Drake*, *Wm. Lichtenstein*, *B. B. Felix*, *F. Thatcher Lane*, *W. L. Finger*; and *J. H. Connors*, *H. N. Young*, *C. D. Garretson*, *A. D. Kunze* and *Hamilton Abert*; and *Acme Rubber Manufacturing Company*, a corporation, *American Rubber Manufacturing Company*, a corporation, *Boston Woven Hose & Rubber Company*, a corporation, *The Cincinnati Rubber Manufacturing Company*, a corporation, *Continental Rubber Works*, a corporation, *The B. F. Goodrich Rubber Company*, a corporation, *The Goodyear Tire & Rubber Company, Inc.*, a corporation, *Hamilton Rubber Manufacturing Company*, a

corporation, Hewitt Rubber Corporation, a corporation, The Home Rubber Company, a corporation, The Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., a corporation, Mercer Rubber Company, a corporation, Pioneer Rubber Mills, a corporation, Quaker City Rubber Company, a corporation, The Republic Rubber Company, a corporation, Thermoid Rubber Company, a corporation, U. S. Rubber Products, Inc., a corporation, and Whitehead Brothers Rubber Company, a corporation, have been and 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Rubber Manufacturers Association, Inc., hereinafter referred to as association respondent, is an incorporated membership trade association, organized under the laws of the State of Connecticut, with its place of business at 444 Madison Avenue, New York, N. Y. Its membership consists of persons, partnerships and corporations, including the respondents named in paragraph 4 hereof, engaged in the manufacture of rubber goods.

Within this respondent association is informally organized the Mechanical Rubber Goods Division, consisting of the persons, partnerships, and corporations engaged in the manufacture of mechanical rubber goods, including fire hose and chemical hose, among whom are included the respondents named in paragraph 4 hereof.

PAR. 2. Respondents A. L. Viles, J. D. Lippman, O. C. Pahline, A. B. Newhall, F. D. Hendrickson, R. E. Drake, Wm. Lichtenstein, B. B. Felix, F. Thatcher Lane, J. H. Connors and W. I. Finger constitute, and since about June 22, 1934, have constituted, the members and administrative officers of the Code Authority for the Rubber Manufacturing Industry, under the Code of Fair Competition for the Rubber Manufacturing Industry, approved by the President December 15, 1933, created under and by virtue of the provisions of the National Industrial Recovery Act, approved June 16, 1933. Said Code Authority hereinafter will be referred to as the Master Code Authority.

PAR. 3. Respondents J. H. Connors, H. N. Young, C. D. Garretson, A. D. Kunze and Hamilton Abert constitute, and since about June 22, 1934, have constituted, the members and administrative officers of the Divisional Code Authority for the Mechanical Rubber Goods Division of the Rubber Manufacturing Industry, created pursuant to the provisions of the above mentioned Code of Fair Competition for the Rubber Manufacturing Industry. Said Code Authority hereinafter will be referred to as the Divisional Code Authority.

PAR. 4. Acme Rubber Manufacturing Company is a corporation organized and existing under the laws of the State of _____, with its principal place of business at Trenton, N. J.

American Rubber Manufacturing Company is a corporation organized under the laws of the State of _____, with its principal place of business at Park Avenue and Watt Street, Oakland, Calif.

Boston Woven Hose & Rubber Company is a corporation organized under the laws of the State of Massachusetts, with its principal place of business at 29 Hampshire Street, Cambridge, Mass.

The Cincinnati Rubber Manufacturing Company is a corporation organized under the laws of the State of Ohio, with its principal place of business at Norwood, in said State.

Continental Rubber Works is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Erie, in said State.

The B. F. Goodrich Rubber Company is a corporation organized under the laws of the State of Michigan, with its principal place of business at Akron, Ohio.

The Goodyear Tire and Rubber Company, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business at Akron, Ohio.

Hamilton Rubber Manufacturing Company is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Trenton, in said State.

Hewitt Rubber Corporation is a corporation organized under the laws of the State of New York, with its principal place of business at Buffalo, in said State.

The Home Rubber Company is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Trenton, in said State.

Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., is a corporation organized under the laws of the State of New Jersey, with its principal place of business at New York, N. Y.

Mercer Rubber Company is a corporation organized under the laws of the State of _____, with its principal place of business at Hamilton Square, N. J.

Pioneer Rubber Mills is a corporation organized under the laws of the State of _____, with its principal place of business at San Francisco, Calif.

Quaker City Rubber Company is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Wissinoming, in said State.

The Republic Rubber Company is a corporation organized under the laws of the State of Ohio, with its principal place of business at Youngstown, in said State.

Thermoid Rubber Company is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Trenton, in said State.

U. S. Rubber Products, Inc., is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 1990 Broadway, New York, N. Y.

Whitehead Brothers Rubber Company is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Trenton, in said State.

The respondents named in this paragraph, 4, hereinafter will be referred to as the corporate respondents.

PAR. 5. All of the corporate respondents are, and at all times hereinafter mentioned have been, engaged in the sale of mechanical rubber products, including fire hose and chemical hose, to wholesalers of, dealers in, and consumers of said commodities located throughout the United States; and pursuant to such sales, and as a part thereof, regularly have shipped and do ship such commodities to their said customers at their respective places of business in States other than the States of the origin of such shipments. Prior to May 1933 these respondents were in active competition with each other, and with other members of the industry, in making and seeking to make such sales; and, but for the facts alleged in paragraphs 6 and 7 hereof, such competition would have continued to the present time. These respondents manufacture the total supply of fire hose and chemical hose in the United States.

PAR. 6. In or about the month of May, 1933, the corporate respondents, and other members of the association respondent, acting with and through the association respondent, entered into and thereafter carried out an agreement, combination and conspiracy, as hereinafter more particularly set forth, for the purpose of restraining trade in mechanical rubber goods, including fire hose and chemical hose, fixing prices at which such commodities should be and would be sold, suppressing competition among corporate respondents in their sales to wholesalers, dealers and consumers, suppressing competition among dealers in said commodities, and suppressing competition between said corporate respondents and dealers in sales to consumers of such commodities. Respondents A. L. Viles, J. D. Lippman, O. C. Pahline, A. B. Newhall, F. D. Hendrickson, R. E. Drake, Wm. Lichtenstein, B. B. Felix, F. Thatcher Lane, W. L. Finger, J. H. Connors, H. N. Young, C. D. Garretson, A. D. Kuntze and Hamilton Abert thereafter

and in or about the month of June, 1934, and after their appointment and qualification as members and administrative officers of the respective Code Authorities, as alleged in paragraphs 2 and 3 hereof, entered into and joined in said agreement, combination and conspiracy, and under color of the power and authority given them as said Code Authorities, aided and assisted in carrying out and accomplishing the purposes of said agreement, combination and conspiracy, as hereinafter more particularly set forth.

PAR. 7. In forming said agreement, combination, and conspiracy, and to carry out and accomplish its purposes, the respondents have done and performed, and still do and perform, the following acts and things:

(1) Corporate respondents, with other members of the association respondent, acting through and with the association respondent—

(a) Agreed to fix from time to time, and did fix from time to time, uniform prices at which all would and did sell rubber goods, including fire hose and chemical hose.

(b) Agreed to fix from time to time, and did fix from time to time, uniform prices at which their wholesaler and retailer customers should resell such rubber goods.

(c) From time to time agreed upon uniform prices to be quoted by them in response to invitations by cities and other governmental and public agencies.

(d) Agreed to file, and from time to time filed, with the association respondent the prices at which they would sell such rubber goods, agreed that such prices would be, and such prices were, uniform as among said respondents, and agreed that none would sell below the prices so filed.

(e) Agreed upon the terms and conditions that were to be a part of all sales made, including, but without limitation, discounts for cash and allowance for freight.

(f) Investigated all reported departures by any manufacturer of such rubber goods from the prices and terms of sale so agreed upon and fixed, and by mass action and mass persuasion forced the manufacturer so departing from such agreements to rectify such departure.

(g) Agreed to refuse to supply, and did refuse to supply, any wholesaler or retailer with their said products who failed or refused to quote or to sell at prices fixed by these respondents as alleged in subdivision (b) above, and agreed to and did close to such offending wholesaler or retailer all sources of supply.

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(2) Respondent members and administrative officers of the Master Code Authority and of the Divisional Code Authority, acting under color of office and employing power and authority pretended by them to be theirs as members and administrative officers of such Code Authorities, which pretended powers and authority were not given them by any provisions of the said Code, but which were expressly withheld from them by Article VIII thereof, have cooperated with and aided the association respondent and the corporate respondents in carrying out and accomplishing the purposes of said agreement, combination and conspiracy, alleged in paragraph 6 hereof, by—

(a) Investigating, checking, exhorting, advising, and requiring the several members of the industry under their jurisdiction to adhere to certain prices on mechanical rubber goods and particularly fire hose, which prices they knew were fixed by agreement as alleged in paragraph 7 hereof.

(b) Interpreting, construing and enforcing rules with respect to uniform terms of sale, to the end that no discount or price advantage accrue to any customer of the members of the industry.

(c) Arbitrarily and without authority classifying buyers without giving them a chance to be heard, and enforcing such classification on the industry in the face of direction of the National Recovery Administrator to the contrary.

(d) Advising, encouraging and assisting members of the industry not to grant to the Federal Government, State governments, and municipalities the benefits of price competition contemplated by Executive Order 6767 of the President of the United States.

(e) Encouraging, assisting and cooperating with members of the industry in requiring wholesalers and retailers to maintain resale prices fixed by agreement of the corporate respondents.

(f) Actively assisting and cooperating with the members of the industry in the conduct of boycotts directed against those who did not maintain resale prices dictated by the corporate respondents.

PAR. 8. The said agreement, combination and conspiracy and the things done thereunder and pursuant thereto, as hereinabove alleged, have had and have the effect of unduly restraining trade among the States of the Union in rubber goods, particularly fire hose and chemical hose; of substantially suppressing competition among the respondents in sales to wholesalers, retailers and consumers, and among wholesalers in their sales to retailers, and among retailers in their sales to consumers, and between respondents and retailers in their

sales to consumers; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels; and otherwise depriving the public of the benefits that would flow from normal competition among and between the respondents, wholesalers and retailers. And such agreement, combination and conspiracy and the things done thereunder and pursuant thereto, as above alleged, constitute unfair methods of competition within the meaning of the Act of Congress approved September 26, 1914, above entitled, and are to the prejudice of the public interest.

ORDER TO CEASE AND DESIST

The Commission having the above matter under consideration, and it appearing that the respondents, with the exception of J. D. Lippman and A. B. Newhall, have made application to withdraw the answers heretofore filed by them, and tender in lieu thereof consent answers under the Rules of Practice of the Commission, wherein said respondents, although insisting that all things done by them were warranted by the Code for this industry formulated and approved under the National Industrial Recovery Act, and therefore done in good faith, nevertheless waive hearing on the charges set forth in the complaint and consent that the Commission may make, enter, issue, and serve upon them, without hearing, without evidence, and without findings as to the facts, an order to cease and desist from the methods of competition alleged in the complaint.

And the Commission having duly considered the complaint and such answers and being fully advised in the premises—

It is therefore ordered, That the respondents, The Rubber Manufacturers Association, Inc., a corporation; A. L. Viles, O. C. Pahline, F. D. Hendrickson, R. E. Drake, Wm. Lichtenstein, B. B. Felix, F. Thatcher Lane, W. L. Finger, J. H. Connors, H. N. Young, C. D. Garretson, A. D. Kunze, and Hamilton Abert; and Acme Rubber Manufacturing Company, a corporation; American Rubber Manufacturing Company, a corporation; Boston Woven Hose & Rubber Company, a corporation; The Cincinnati Rubber Manufacturing Company, a corporation; Continental Rubber Works, a corporation; The B. F. Goodrich Rubber Company, a corporation; The Goodyear Tire & Rubber Company, Inc., a corporation; Hamilton Rubber Manufacturing Company, a corporation; Hewitt Rubber Corporation, a corporation; The Home Rubber Company, a corporation; Raybestos-Manhattan, Inc., a corporation; Mercer Rubber Company, a corporation; Pioneer Rubber Mills, a corporation; Quaker City Rubber Company, a corporation; The Republic Rubber Company, a corpora-

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tion; Thermoid Rubber Company, a corporation; United States Rubber Products, Inc., a corporation; and Whitehead Brothers Rubber Company, a corporation; be and hereby are permitted to withdraw the answers heretofore filed by them, and to file consent answers in lieu thereof, and the substituted answers tendered are received and filed.

It is further ordered, That said corporate respondents, except the respondent association, their officers, agents, representatives, and employees, forthwith cease and desist, in connection with the business of selling and offering for sale mechanical rubber goods, including fire hose and chemical hose, in interstate commerce, from doing and performing, by understanding, agreement or combination among themselves or between or among any two or more of them, or with others, acting directly or by or through the respondent association, the following acts and things:

- (1) Fixing prices, at which said commodities would be sold.
- (2) Fixing prices at which their wholesaler and retailer customers would be required to sell such commodities.

- (3) Fixing prices at which they would sell, or offer to sell, such commodities to cities, States and other governmental and public agencies.

- (4) In any manner communicating to one another, or other manufacturers or competitors, the price at which they proposed or intended to sell commodities in the future, for the purpose and with the effect of hindering or preventing competition between and among themselves, or any two or more of them, or with others; provided that nothing herein shall prevent the disclosure of future prices in the ordinary course of business.

- (5) Fixing uniform terms and conditions of sale under which they propose to sell such commodities, for the purpose or with the effect of hindering or preventing competition.

- (6) Seeking to influence or persuade competing manufacturers or dealers with regard to the price at which such competitor or competitors would or should sell such commodities, for the purpose or with the effect of suppressing or hindering or preventing competition.

- (7) Refusing to supply such commodities to any wholesaler or retailer, or other customer because he failed or refused to quote, or agree to quote, or sell at prices fixed by them.

- (8) Classifying buyers or prospective buyers of such commodities for the purpose and with the effect of suppressing or preventing competition among themselves, or any two or more of them, or with others.

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It is further ordered, That said individual respondents, A. L. Viles, O. C. Pahline, F. D. Hendrickson, R. E. Drake, Wm. Lichtenstein, B. B. Felix, F. Thatcher Lane, W. L. Finger, J. H. Connors, H. N. Young, C. D. Garretson, A. D. Kunze and Hamilton Abert, their agents and representatives, acting as individuals or in a representative capacity as members or officers of a code authority or other organization, forthwith cease and desist from doing or performing, or aiding, assisting or cooperating with the other respondents or any of them in doing or performing, any of the acts or things restrained by the above terms of this order.

The Commission finding that respondents, J. D. Lippman and A. B. Newhall, have only recently become members of the Code Authority for the Rubber Industry and did not participate in any of the activities of the Code Authority during the time the acts and things alleged in the complaint were done, it is ordered that the complaint as to these two respondents be dismissed.

It is further ordered, That within 60 days from the date of the service of this order upon said respondents, they shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

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IN THE MATTER OF

BAKER PAINT & VARNISH COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2429. Complaint, June 6, 1935—Order, July 29, 1935*

Consent order requiring respondent company, its officers, etc., in connection with the sale, offer or distribution of paints in interstate commerce, to cease and desist from using the words "Baker's Z & L Combination WHITE Ground in strictly pure Refined Linseed Oil", or the words "zinc and lead" or "zinc lead", or words or initials of like tenor or substance to describe, advertise, brand or label paint or paint pigment, unless and until the pigment in such paint is composed wholly of lead carbonate and zinc oxide, or lead sulphate and zinc oxide in sufficient quantity and proportion to be substantial and effective.

Mr. Astor Hogg for the Commission.

COMPLAINT

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 has reason to believe that Baker Paint & Varnish Company, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is and at all times hereinafter mentioned was a corporation organized, created and existing under and by virtue of the laws of the State of New Jersey, having its main office and principal place of business in the city of Jersey City in said State. It is and for more than two years last past has been engaged in the business of selling and distributing paint and paint materials to dealers and consumers located throughout the United States and in the District of Columbia, and pursuant to such sales shipments are made to the respective purchasers thereof from respondent's place of business in Jersey City, N. J., into and through various States of the United States other than the State or point of origin of such shipments and in the District of Columbia. There