

Complaint

IN THE MATTER OF

BIRMINGHAM AUTOMOTIVE JOBBERS ASSOCIATION
ET AL.

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

Docket 2382. Complaint, May 6, 1935—Order, Aug. 9, 1935

Consent order requiring that respondent association, and the officers, members, directors, agents, etc., thereof, in connection with the sale and offer for sale in interstate commerce of automobile parts and accessories, forthwith cease and desist from,—

- (a) Carrying out an agreement, combination, understanding and conspiracy among themselves, or between or among any two or more of them, or with others, acting directly by or through the respondent association by which they, or any of them, fix and maintain uniform prices to be exacted by them from their purchasers of automobile parts and accessories;
- (b) Using any of the methods of competition alleged in the complaint, to wit, combining and conspiring to fix and maintain uniform prices through entering into and complying with agreements to (1) use and abide by manufacturers' resale schedules for sale of such parts and accessories, (2) fix uniform prices for sale of such parts and equipment, and for jobs involving labor only, and for those involving both parts and labor, or (3) schedules of discounts to be allowed certain classes of purchasers of such parts and accessories, (4) requiring certain classes of purchasers to resell parts and accessories purchased from the members at manufacturers' list prices or association prices, and (5) that each member before making any change in price of any part, accessory or labor except closeout items is either to notify the association secretary in writing or each member before putting such change into effect; or
- (c) Doing or permitting 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 respondent association, the doing of such acts and practices as hereinabove set forth, and as in the order specified in detail; and

Ordered further that complaint be dismissed without prejudice as to respondent Auto Electric & Carburetor Co. for the reason that said respondent has not technically been a member of respondent association since April 1934, attempted to resign therefrom on September 15, 1934, and has had no active or apparent participation therewith since November 15, 1934, as in said order set forth.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Oliver Henderson, of Birmingham, Ala., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

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mission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that the Birmingham Automotive Jobbers Association, an unincorporated association, its officers as follows: G. E. Woodward, president; M. H. Johnson, vice president; A. J. Seigal, second vice president; and Oliver Henderson, secretary-treasurer; and its members as follows: Alabama Auto Parts Company, a corporation, Birmingham Electric Battery Company, a corporation, Cruse-Crawford Wheel & Rim Company, a corporation, Lawson Auto Parts Company, a corporation, Southern Bearing & Parts Company, a corporation, A. J. Brown, doing business under the trade name and style of Simplex Piston Ring Company, and A. D. Slye, doing business under the trade name and style of Slye's Auto Supply Company, 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Birmingham Automotive Jobbers Association, is a voluntary unincorporated trade association organized in 1933 of the corporations and individuals hereinafter named, with their principal places of business in or around the city of Birmingham, State of Alabama, and who are engaged in the business of jobbing automobile parts and accessories to garages, automobile dealers, fleet owners, and the like, located both within the State of Alabama and in neighboring States, and said members are banded together in respondent association for the purpose of protecting their common interests, and said respondent members now constitute and since the organization of respondent association have constituted a majority of the jobbers of automobile parts and accessories in and around the city of Birmingham, State of Alabama, and occupy a dominant position in and about the surrounding territory in such trade. Said respondent, Birmingham Automotive Jobbers Association, will hereinafter be designated as respondent association. The principal office and place of business of said respondent association is Room 200, Clark Building, in the city of Birmingham, State of Alabama. Its officers are and continuously since its organization have been the following, who are hereinafter referred to as respondent officers:

G. E. Woodward, president, whose principal place of business is located at 305 South Twenty-first Street, in the city of Birmingham, State of Alabama.

M. H. Johnson, vice president, whose principal place of business is located at 2300 Second Avenue South, in the city of Birmingham, State of Alabama.

A. J. Seigal, second vice president, whose principal place of business is located at 514 South Eighteenth Street, in the city of Birmingham, State of Alabama; and

Oliver Henderson, secretary-treasurer, whose principal place of business is located at Room 200 Clark Building, in the city of Birmingham, State of Alabama.

The members of said respondent association are now and have been since its organization the following, who are hereinafter referred to as respondent members:

Alabama Auto Parts Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business at 514 South Eighteenth Street, in the city of Birmingham, State of Alabama.

Auto Electric & Carbureter Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business at 517 South Twenty-second Street, city of Birmingham, State of Alabama.

Birmingham Electric Battery Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business at 2300 Second Avenue South, in the city of Birmingham, State of Alabama.

Cruse-Crawford Wheel & Rim Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business at 2015 Third Avenue South, in the city of Birmingham, State of Alabama.

Lawson Auto Parts Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business at Avenue "E" and Twenty-first Street, in the city of Birmingham, State of Alabama.

Southern Bearing & Parts Company, a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal office and place of business at 305 South Twenty-first Street, in the city of Birmingham, State of Alabama.

A. J. Brown, doing business under the trade name and style of Simplex Piston Ring Company, with its principal office and place of business at 209 South Eighteenth Street, in the city of Birmingham, State of Alabama; and

A. D. Slye, doing business under the trade name and style of Slye's Auto Supply Company, with its principal office and place of business at 2105 Avenue "E", Ensley, Ala.

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PAR. 2. All of the respondent members described in paragraph 1 hereof are now and have been for several years last past engaged in the business of jobbing and wholesaling automobile parts and accessories. All of said respondent members, except A. J. Brown, doing business under the trade name and style of Simplex Piston Ring Company, and A. D. Slye, doing business under the trade name and style of Slye's Auto Supply Company, operate machine shops in conjunction with their jobbing businesses.

All of said respondent members, except A. J. Brown, doing business under the trade name and style of Simplex Piston Ring Company, and A. D. Slye, doing business under the trade name and style of Slye's Auto Supply Company, in the course and conduct of their businesses as aforesaid, have caused and still cause such automobile parts and accessories, when sold by them to be transported from their respective places of business into and through various States of the United States other than the State of Alabama to the purchasers thereof in such other States, and there is now and there has been for more than two years last past a constant current of trade and commerce in such parts and accessories by the said respondent members.

Said respondent members, A. J. Brown, doing business under the trade name and style of Simplex Piston Ring Company, and A. D. Slye, doing business under the trade name and style of Slye's Auto Supply Company, are members of the respondent association, Birmingham Automotive Jobbers Association, and have abided by the rules, regulations, and agreements of said association more particularly hereinafter set out.

Said respondent members now constitute, and since the organization of respondent association in July 1933 have constituted a majority of the automobile parts and accessories jobbers in the city of Birmingham, State of Alabama, and occupy a dominant position in and about the territory in which they sell such automobile parts and accessories.

PAR. 3. In September 1933, or thereabouts, the said respondent members named in paragraph 1 hereof, for the purpose of eliminating price competition among themselves, entered into and they have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves, hereinafter more particularly described, through and by means of said respondent, Birmingham Automotive Jobbers Association, and its aforesaid officers, by which agreement, combination, understanding, and conspiracy they have fixed and maintained and still fix and maintain uniform prices to be exacted by them from their purchasers of automobile parts and accessories.

Pursuant to and for the purpose of carrying out the said agreement, combination, understanding, and conspiracy entered into by the said respondent members among themselves and through the said respondent association and respondent officers, the respondent members, among other things, have done the following:

(a) Agreed that they would use and abide by and pursuant to such agreement have used and have abided by the manufacturers' resale schedules in the selling of all automobile parts and accessories.

(b) Agreed to fix from time to time, and pursuant to such agreement have fixed from time to time uniform prices at which automotive parts and equipment should be sold.

(c) Agreed to fix from time to time, and pursuant to such agreement have fixed from time to time uniform prices for various repair jobs involving only labor.

(d) Agreed to fix from time to time, and pursuant to such agreement have fixed from time to time uniform prices for various repair jobs involving both automobile parts and labor.

(e) Agreed to fix from time to time, and pursuant to such agreement have fixed from time to time schedules of discounts to be allowed by them to certain classes of purchasers of automobile parts and accessories.

(f) Agreed to require and pursuant to such agreement have required certain classes of their purchasers to resell the automobile parts and accessories purchased from respondent members at the list prices of the manufacturers thereof or at prices fixed by the respondent association.

(g) Agreed that wherever and whenever a member should deem it fit to make a change in any price or prices on any automobile part, accessory, or labor, except closeout items, that said member would either notify the secretary of said respondent association in writing, or each member before such change should be put into effect.

PAR. 4. The aforesaid alleged acts and practices of the respondents had and still have the tendency and capacity to constrain all jobbers of automobile parts and accessories doing business in the territory above mentioned to uniformly sell the aforesaid products to their dealer-customers, garage owners, fleet owners, and the like, at the prices fixed by said respondent association, and its members as hereinbefore set out, and hence to hinder and suppress all price competition in the jobbing of said products in said territory, particularly among the members of the association, and further to hinder and

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restrain price competition between all their dealer-customers in said territory.

Respondents' said practices thus tended and still tend to unduly hinder and obstruct the free and natural flow of commerce in the channels of interstate commerce, enhance prices to the purchasing public, and have otherwise deprived the public of the benefits that would flow from normal competition among and between the respondents and their dealer-customers. Such agreement, understanding, combination, and conspiracy and the things done thereunder and pursuant thereto as above alleged, 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.

ORDER TO CEASE AND DESIST

The respondents, Birmingham Automotive Jobbers Association, an unincorporated trade association, its officers, G. E. Woodward, M. H. Johnson, A. J. Seigal, and Oliver Henderson, and its members, Alabama Auto Parts Company, a corporation; Birmingham Electric Battery Company, a corporation; Cruse-Crawford Wheel & Rim Company, a corporation; Lawson Auto Parts Company, a corporation; Southern Bearing & Parts Company, a corporation; A. J. Brown, doing business under the trade name and style of Simplex Piston Ring Company; and A. D. Slye, doing business under the trade name and style of Slye's Auto Supply Company, having heretofore filed their respective answers to the complaint in this proceeding, and having subsequently filed with this Commission their motion that they respectively be permitted to withdraw their said answers and be permitted to file in lieu thereof a substitute answer in which they and each of them consent 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 said respondents, an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the motion and said answer, and being fully advised in the premises—

It is therefore ordered, That the said motion be and the same is hereby granted; that the said answers heretofore filed be and the same are hereby withdrawn; and that the said proposed substituted answer be and the same is hereby filed in lieu of the said answers so withdrawn.

It is further ordered, That the above-named respondents, their respective officers, directors, agents, servants, employes, and successors, in connection with the business of selling, and offering for sale, automobile parts and accessories in interstate commerce, forthwith cease and desist from carrying out an agreement, combination, understanding, and conspiracy among themselves, or between or among any two or more of them, or with others, acting directly by or through the respondent association by which they, or any of them, fix and maintain uniform prices to be exacted by them from their purchasers of automobile parts and accessories; that they and each of them further cease and desist from using any of the methods of competition alleged in the complaint; and that they further cease and desist from doing or permitting 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 respondent association, the following acts and practices:

(1) Abiding by manufacturers' resale schedules in the selling of all automobile parts and accessories.

(2) Fixing prices at which such articles should be sold.

(3) Fixing prices for certain repair jobs involving only labor.

(4) Fixing prices for repair jobs involving both automobile parts and labor.

(5) Fixing or maintaining a schedule of discounts to be allowed by them to certain classes of purchasers of automobile parts and accessories.

(6) Requiring their customers to resell such articles so purchased from them at list prices of the manufacturer thereof, or at prices fixed by respondent association, and

(7) Requiring every member of respondent association, before a price change is to be effected by them or any of them, except close-out items, to notify either the secretary of respondent association or each member in writing.

It is further ordered, that within 60 days from the date of 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 they have complied with this order.

ORDER OF DISMISSAL

It appearing that the respondent Auto Electric & Carburetor Company attempted to resign from respondent association on September 15, 1934, and the association refused to accept such resignation, and

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it further appearing that said Auto Electric & Carburetor Company has not technically been a member of said association since April 1934 because of nonpayment of dues, and has had no active or apparent participation with the respondent association since November 15, 1934, the same having been duly considered and understood by the Commission—

It is therefore ordered, That the complaint herein be and the same is hereby dismissed, without prejudice, as to the respondent Auto Electric & Carburetor Company.

Complaint

IN THE MATTER OF

AMERICAN SHELL PRODUCTS COMPANY

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

Docket 2258. Complaint, Dec. 10, 1934—Decision, Aug. 13, 1935

Where a corporation engaged in buying and crushing mussel and oyster shells, and in the sale of such crushed shell to wholesale and retail dealers in the various States for ultimate resale to the purchasing public for use in feeding chickens—

- (a) Featured word "oyster" upon the labels of the sacks in which it sold various brands of its said product, containing proportions of oyster shell ranging from 50 percent to 5 percent, depending upon the particular brand involved, and displayed word "mussel" in an obscure place, and in relatively inconspicuous fashion, and in such small plain letters as compared with the large shaded letters in which word "oyster" was printed, that each letter in latter word was approximately two thirds of the size of the entire word "mussel"; and
- (b) Set forth upon the labels of the bags of three of the four brands sold by it, the words "Biloxi, Miss.", in addition to its own inland address, notwithstanding fact it maintained no office or place of business in Biloxi, known to trade and poultry raisers as one of the principal shipping points for crushed oyster shell;

With result of leading purchasers and prospective purchasers to believe that said bags of its product contained the more costly and preferred crushed oyster shell exclusively, and of confusing, misleading, and deceiving a substantial portion of the trade and purchasers in said respect, and with capacity and tendency so to do, and to induce purchase and use of its said products by the purchasing public because of such erroneous belief, and divert trade to it from competitors who sell crushed oyster shell and from those who sell mussel shell, truthfully branded, to their injury:

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

Before *Mr. John W. Addison*, trial examiner.
Mr. Edw. W. Thomerson for the Commission

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Iowa corporation, engaged in buying and crushing mussel and oyster shell, and in selling such crushed shell for use in supplying calcium carbonate in feeding chickens, and with principal place of business in Muscatine, Iowa, with misbranding or mislabeling as to composition of product, in violation of the pro-