

Complaint

21 F. T. C.

IN THE MATTER OF
WYOMING VALLEY JOBBERS ASSOCIATION, INCORPORATED,
ITS OFFICERS AND ACTIVE MEMBERS

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

Docket 2403. Complaint, May 22, 1935—Order Aug. 16, 1935

Consent order requiring respondent association, its officers, active members, and their officers, agents, etc., in the purchase, sale and distribution in interstate commerce of tobacco and confectionery products, to cease and desist from—

- (a) Combining, conspiring or uniting in a common course of action, and cooperating and confederating together, among themselves and with others to prevent competing dealers in tobacco and confectionery products from obtaining tobacco and confectionery products directly from the manufacturers thereof;
- (b) Publishing lists or "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;
- (c) Conspiring or uniting to fix and establish uniform prices at which members of respondent association or others shall sell such products;
- (d) Maintaining, by concerted action, coercion and persuasion, a boycott against, and refusal to purchase tobacco products from any tobacco manufacturer or manufacturers located outside of the State of Pennsylvania engaged in the sale of tobacco in interstate commerce in the Wilkes-Barre, Pa., district.

Mr. P. C. Kolinski for the Commission.

Mr. Andrew Hourigan, of Wilkes-Barre, Pa., for respondents and
Mr. Louis Shaffer, of Wilkes-Barre, Pa., for Shaffer Tobacco Co., 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, Wyoming Valley Jobbers Association, Inc., is a nonprofit corporation incorporated under the laws of the

State of Pennsylvania, whose membership is composed of individuals, partnerships, and corporations with their respective places of business in the cities of Wilkes-Barre, Nanticoke, Forty Fort, Kingston, Swoyersville, Plymouth, and Pittston, State of Pennsylvania, engaged as brokers, distributors, and wholesalers in selling tobacco and confectionery to retail dealers located in said State and in neighboring States. Said Wyoming Valley Jobbers Association, Inc., will hereinafter be referred to as the "association".

Respondents Haskell Ginsburgh, John Yeager, J. H. Arenson, and E. A. Stroud are respectively president, vice president, secretary, and treasurer of said association, in charge of conducting and administering its activities and affairs.

The members of the association are as follows: Respondent Jacob H. Arenson, an individual, trading under the firm name and style of J. H. Arenson Tobacco Company, with his principal place of business located at Nanticoke, Pa.; respondent Herbert L. Austin, an individual, trading under the firm name and style of Acme Candy Company, with his place of business located at Forty Fort, Pa.; respondent W. L. Andress, an individual, with his place of business located at Kingston, Pa.; respondent Abe Unterburger, an individual, trading under the firm name and style of Diamond City Candy & Beverage Company, with his principal place of business located at Wilkes-Barre, Pa.; respondent George S. Dymond, an individual, whose place of business is located in the city of Wilkes-Barre, Pa.; respondent Ezra Stern, an individual, trading under the firm name and style of Ezra Stern Company, with his principal place of business located at Wilkes-Barre, Pa.; respondent J. G. Evans, an individual, whose place of business is located at Kingston, Pa.; respondent S. Fanti, an individual, whose place of business is located at Swoyersville, Pa.; respondent M. Gross, Jr., an individual, whose place of business is located at Wilkes-Barre, Pa.; respondent W. T. Keeley, an individual, whose place of business is located at Wilkes-Barre, Pa.; respondent Summers Puckey, an individual, trading under the firm name and style of Keystone Specialty Company, with his principal place of business located at Nanticoke, Pa.; respondent Key Stores Company, Inc., a corporation organized under the laws of the State of Delaware, with its office and principal place of business located in the city of Wilkes-Barre, Pa.; respondent Frank Klein, an individual, trading under the firm name and style of Klein Candy Company, with his principal place of business located at Wilkes-Barre, Pa.; respondent Morris Weltman, an individual, trading under the firm name and style of Majestic Candy Company, with his principal place of business located at Wilkes-

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Barre, Pa.; respondents A. E. Mihalick and Mary Mihalick, copartners, trading under the firm name and style of A. E. Mihalick Tobacco Company, with their place of business located at Plymouth, Pa.; respondent Novelty Candy Company, with its place of business located at Nanticoke, Pa.; respondent Pittston Tobacco Company, a corporation organized under the laws of the State of Pennsylvania, with its office and principal place of business located in the city of Pittston, Pa.

Respondent Paul P. Podkul, an individual, whose place of business is located at Wilkes-Barre, Pa.; respondent J. S. Rothstein, an individual, trading under the firm name and style of J. S. Rothstein Company, with his principal place of business located at Wilkes-Barre, Pa.; respondent Morris Siegel, an individual, whose place of business is located at Wilkes-Barre, Pa.; respondent Shaffer Tobacco Company, Inc., a corporation organized under the laws of the State of Pennsylvania, with its office and principal place of business located at Wilkes-Barre, Pa.; respondent Sperling Tobacco Company, a corporation organized under the laws of the State of Pennsylvania, with its office and principal place of business located at Wilkes-Barre, Pa.; respondent Star Tobacco Company, a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Wilkes-Barre, Pa.; respondent Vincent Stawinski, an individual, whose place of business is located at Wilkes-Barre, Pa.; respondents Fred D. Turner and Robert R. Stevens, copartners, trading under the firm name and style of Turner & Stevens Company, with their place of business located at Wilkes-Barre, Pa.; respondent Meyer H. Abelson, an individual, trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Company, with his principal place of business located at Wilkes-Barre, Pa.; respondent Russell Williams, an individual, whose place of business is located at Pittston, Pa.; and respondent J. W. Yeager, an individual, whose place of business is located at Kingston, Pa.

PAR. 2. The said tobacco and confectionery products industry includes among its products certain widely known nationally advertised articles for which the consuming public maintains a consistent demand. These nationally advertised tobacco and 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 tobacco and confectionery products, in which they deal, directly and immediately from manufacturers thereof located for the most part in States other than the State of Pennsylvania, and manufac-

turers ship said products, when so purchased, from their respective places of business in such other States to said members in the State of Pennsylvania.

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, and otherwise are in such competition with other individuals, partnerships, and corporations also engaged in the purchase of tobacco and confectionery products from aforesaid manufacturers located in States other than the State of Pennsylvania, and the resale thereof in the State of Pennsylvania 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 tobacco and confectionery 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 tobacco and confectionery products in the Wilkes-Barre trade area; and in 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 profits. The volume of consumption of tobacco and confectionery products in said Wilkes-Barre trade area, and the volume of trade and commerce dealt in by respondents in such products in, to, and from said area constitute a substantial part of the trade and commerce of the United States in the tobacco and confectionery products industry. Said trade area is a large and important outlet and market for the sale of tobacco and confectionery 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. In October 1933, or thereabouts, respondents named in paragraph 1 hereof, entered into, have since carried out, and are still carrying out an agreement, combination, understanding and conspiracy among themselves, to prevent said competing dealers in tobacco and confectionery products, mentioned in paragraph 2 hereof, from obtaining tobacco and confectionery products directly from aforesaid manufacturers thereof; to establish respondent members as a class of "recognized" brokers, distributors, and wholesalers of said products in the said Wilkes-Barre trade area; to fix and estab-

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lish 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, hinder, and lessen competition in substantial interstate commerce 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 tobacco and confectionery 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) By concerted action, persuaded, coerced, and compelled its members to boycott and refuse to buy tobacco products from a tobacco manufacturer located outside of the State of Pennsylvania, with the result that for the period of one month or thereabouts, interstate commerce between said tobacco manufacturer and the Wilkes-Barre, Pennsylvania district, as normally accomplished in said trade, was totally suspended and blocked.

(e) Held meetings of respondent association, its members, and officers, 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 tobacco and confectionery trade and industry to abide by and adhere to said program.

(f) 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 Wilkes-Barre 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 tobacco and 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.

(g) 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.

(h) 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. That Codes of Fair Competition for the Wholesale Tobacco Trade and Wholesale Confectioners Industry, were approved June 9, 1934, and June 6, 1934, respectively, by the President pursuant to the provisions of Title I of an Act of Congress approved June 16, 1933, entitled "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes". Said codes specifically prohibit monopolistic practices and the transactions known as boycotting and black-listing; that the acts and practices of respondents herein were and are in direct violation of the express provisions of said Codes of Fair Competition and contrary to the meaning and intent thereof.

PAR. 5. 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 Wilkes-Barre trade area and other related

or connected territory: to close and curtail sundry outlets within the State of Pennsylvania for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the State of Pennsylvania; to monopolize, in said respondent members and recognized dealers, the business of dealing in and distributing tobacco and confectionery products; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said tobacco and confectionery industry in the State of Pennsylvania, 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 tobacco and confectionery products; to 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 Pennsylvania the same methods of boycott and "white-listing" employed by respondents.

PAR. 6. The above alleged acts and things done by respondent as set forth in paragraphs 3 and 5 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

This proceeding having been considered by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents filed herein, wherein respondents state that they do not desire to contest the proceeding, waive hearing, and consent that the Commission make, enter, and serve upon them an order to cease and desist from the violations of law charged in the complaint—

It is now ordered, That the respondents Wyoming Valley Jobbers Association, Inc., a corporation, its officers and active members: Haskell Ginsburgh, John Yeager, J. H. Arenson, and E. A. Stroud, individually and as president, vice president, secretary, and treasurer respectively of said association; Jacob H. Arenson, an individual,

trading under the firm name and style of J. H. Arenson Tobacco Company, Herbert L. Austin, an individual, trading under the firm name and style of Acme Candy Company; W. L. Address; Abe Unterburger, an individual, trading under the firm name and style of Diamond City Candy & Beverage Company; George S. Dymond; Ezra Stern, an individual, trading under the firm name and style of Ezra Stern Company; J. G. Evans, S. Fanti; M. Gross, Jr.; W. T. Keeley; Summers Puckey, an individual, trading under the firm name and style of Keystone Specialty Company; Key Stores Company, Inc.; Frank Klein, an individual, trading under the firm name and style of Klein Candy Company; Morris Weltman, an individual, trading under the firm name and style of Majestic Candy Company; A. E. Mihalick and Mary Mihalick, copartners, trading under the firm name and style of A. E. Mihalick Tobacco Company; Novelty Candy Company; Pittston Tobacco Company; Paul P. Podkul; J. S. Rothstein, an individual, trading under the firm name and style of J. S. Rothstein Company; Morris Siegel; Shaffer Tobacco Company, Inc.; Sperling Tobacco Company; Star Tobacco Company; Vincent Stawinski; Fred D. Turner and Robert R. Stevens, copartners, trading under the firm name and style of Turner & Stevens Company; Meyer H. Abelson, an individual, trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Company; Russell Williams; and J. W. Yeager; their officers, agents, representatives and employes, in the purchase, sale and distribution in interstate commerce of tobacco and confectionery products, do cease and desist from:

(1) Combining, conspiring or uniting in a common course of action, and cooperating and confederating together, among themselves and with others to prevent competing dealers in tobacco and confectionery products from obtaining tobacco and confectionery products directly from the manufacturers thereof.

(2) 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.

(3) Conspiring or uniting to fix and establish uniform prices at which members of respondent association or others should sell such products.

(4) Maintaining by concerted action, coercion and persuasion, of a boycott against, and refusal to purchase tobacco products from, any tobacco manufacturer or manufacturers located outside of the State of Pennsylvania engaged in the sale of tobacco in interstate commerce in the Wikes-Barre, Pa., district.

It is further ordered, That the respondents Wyoming Valley Jobbers Association, Inc., a corporation, its officers and active members: Haskell Ginsburg, John Yeager, J. H. Arenson, and E. A. Stroud, individually and as president, vice president, secretary, and treasurer, respectively, of said association; Jacob H. Arenson, an individual, trading under the firm name and style of J. H. Arenson Tobacco Company, Herbert L. Austin, an individual, trading under the firm name and style of Acme Candy Company; W. L. Address; Abe Unterburger, an individual, trading under the firm name and style of Diamond City Candy & Beverage Company; George S. Dymond; Ezra Stern, an individual, trading under the firm name and style of Ezra Stern Company; J. G. Evans, S. Fanti; M. Gross, Jr.; W. T. Keeley; Summers Puckey, an individual, trading under the firm name and style of Keystone Specialty Company; Key Stores Company, Inc.; Frank Klein, an individual, trading under the firm name and style of Klein Candy Company; Morris Weltman, an individual, trading under the firm name and style of Majestic Candy Company; A. E. Mihalick and Mary Mihalick, copartners, trading under the firm name and style of A. E. Mihalick Tobacco Company; Novelty Candy Company; Pittston Tobacco Company; Paul P. Podkul; J. S. Rothstein, an individual, trading under the firm name and style of J. S. Rothstein Company; Morris Siegel; Shaffer Tobacco Company, Inc.; Sperling Tobacco Company; Star Tobacco Company; Vincent Stawinski; Fred D. Turner and Robert R. Stevens, copartners, trading under the firm name and style of Turner & Stevens Company; Meyer H. Abelson, an individual, trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Company; Russell Williams; and J. W. Yeager; within 60 days after the service upon them of this order shall file with the Commission reports, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint
IN THE MATTER OF
NATIONAL REMEDY COMPANY

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

Docket 2136. Complaint, Dec. 13, 1933—Order, Sept. 5, 1935

Consent order requiring respondent corporation, its officers, etc., in connection with the sale in interstate commerce of its preparation known as "Japanese Oil" or "En-Ar-Co Japanese (style) Oil" or substantially the same preparation under any other name, to cease and desist from representing that such preparation is a cure or adequate treatment for sore throat, colds, or congestion connected therewith, or for congestion, aches and pains, rheumatism, neuralgia, neuritis, or stiff joints, or for baldness or dandruff, or that it will cause new hair to grow, subject to the proviso, however, that nothing contained in such order shall be construed to prevent respondent from representing that said preparation is beneficial in the treatment of minor throat and bronchial irritations, or that it is beneficial in the treatment of sprains, stiffness and muscular aches and soreness due to fatigue and exposure, or that it is beneficial in the treatment of simple neuralgia, or that it is beneficial for removing loose dandruff by its cleansing effect upon the scalp, or that it is beneficial to the scalp and hair by aiding the superficial circulation.

Mr. Harry D. Michael for the Commission.

Brashears, Townsend, O'Brien & Beasley, of Washington, D. C.,
and *Mr. Frederic Damrau*, of New York City, for respondent.

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 National Remedy Company has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges as follows:

PARAGRAPH 1. That said respondent, National Remedy Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business in the city of New York in said State.

PAR. 2. That said respondent is now and has been engaged for more than ten years last past in the sale and distribution in interstate commerce of a preparation known and described as "Japanese Oil" or "En-Ar-Co Japanese (style) Oil", which said preparation respondent causes to be transported in interstate commerce from its