

Syllabus

IN THE MATTER OF

NEW YORK STATE WHOLESALE CONFECTIONERY
ASSOCIATIONS, INC., ET AL.

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

Docket 2613. Complaint, Nov. 6, 1935—Decision, June 1, 1936

Where the members of eight State associations, engaged in the sale of candy and allied products at wholesale between and among the various States and in the District of Columbia, and in purchasing the products thus dealt in by them from manufacturers located, for the most part, in States other than New York and Pennsylvania, and naturally and normally in competition with one another and with others similarly engaged in the purchase and resale of candy, and constituting a large and important part of all the distributors and wholesalers in candy, confectionery, and allied products in their respective territories and areas, and so large and influential a group, in the case of each of their said associations, as to be able to control and influence the flow of trade and commerce in said products within, to, and from the areas in which their respective associations trade; and said associations, and their State associations into which they were allied and banded together and thus enabled more effectively to exercise control of and influence trade and commerce involved for the promotion and enhancement of their own respective volume of trade and commerce, and representing all together a volume of consumption and trade in commerce constituting an important part of that of the United States in the industry concerned, and, in respect of the trade areas served by the respective associations, a large important outlet for the sale of candy and allied products by manufacturers and distributors within such area and by those in other States and particularly east of the Mississippi River, and a volume of business, taken together, constituting a substantial part of all the business done by wholesalers of candy and allied products in the States of New York and Pennsylvania—

- (a) Agreed among themselves to prevent nonmember competitors from obtaining such products directly from the manufacturers thereof, to establish themselves as a class of recognized wholesalers, distributors, and brokers of said products in their respective areas, to fix and establish uniform prices at which the various members should sell such products, and to prevent others from selling at lower prices, and thereby to suppress, hinder, and lessen competition in interstate commerce in the sale and distribution of said products in their aforesaid territories, and in pursuance of such purposes—
- (1) Fixed and maintained uniform prices for candy and allied products sold by them and induced manufacturers not to sell to anyone who sold or would resell at a lower price;
- (2) Exacted and procured pledges and promises from each recognized dealer and member of the respective associations and from manufacturers and producers of such products, to the effect that such dealers, members, manufacturers, and producers would support and enforce their aforesaid program;

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- (3) Printed and published white lists containing names of recognized dealer-members of the associations so as to include therein only so-called legitimate or regular or recognized dealers, distributors and wholesalers of products in question, and supplied such lists to manufacturers and sent them also letters calling their attention to certain nonmember wholesalers, etc., for the purpose of inducing such manufacturers to cease dealing with and refuse to open accounts with such nonmember dealers, etc.;
- (4) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott and threats thereof and other united action against manufacturers, dealers, and others to induce and require them to agree and conform to and support their said program and refrain from selling their products to nonmember dealers, etc.;
- (5) Held meetings of their various associations to devise means and methods of exerting influence, pressure, coercion, and other means, and to require manufacturers, brokers and dealers, and others to abide by their said program;
- (6) Advised manufacturers of the names of the recognized dealers in their trade area and of their purpose and determination to insist that they distribute their products through such dealers exclusively, and in conformity with their program, and that sale and distribution by them of their products direct to non-recognized dealers and purchasers or their failure to conform to said program and distribution of their products, would be considered as unfriendly acts against their associations and such recognized dealers; and
- (7) Denied membership in their associations to dealers who failed to support and carry out said program, and expelled therefrom those dealers who failed so to do; and

Where an organization composed of brokers in candy and allied products, and of salesmen of various manufacturers of such products, and which was organized to assist the aforesaid associations in carrying out their said agreement, and conspiracy—

- (b) Assisted such associations in carrying out such agreement and conspiracy, and, incident to such assistance—
- (1) Refused to sell and induced manufacturers not to sell to anyone who had resold or would resell their products at less than the prices fixed as aforesaid;
- (2) Refused to sell and induced manufacturers not to sell to nonrecognized dealers; and
- (3) Refused to call for orders upon dealers or distributors who were not members of the aforesaid associations;

With the result that in the New York and related or connected territories, sundry outlets in said State for the direct sale by manufacturers in other States of their goods into New York were closed and curtailed, business of dealing in and distributing candy and allied products was monopolized by such associations and recognized dealers, competition in said industry in New York was unreasonably lessened, eliminated or restrained, and hampered, and the purchasing and consuming public was deprived of advantages in prices, services, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair trade and competition in said industry, and freedom of fair and legitimate competition therein was otherwise restrained and deterred and the natural flow of commerce in the channels of interstate trade obstructed, and small business enterprises engaged in industry in question were suppressed or eliminated and dis-

criminated against, and public and manufacturers, dealers, and others who did not conform to their said program or were compelled so to do do contrary to their wishes, were prejudiced and injured, and there was a capacity and tendency for such methods of boycotting and white listing thus employed to spread into States other than New York:

Held, That such acts and practices were monopolistic and constituted unfair methods of competition within the intent and meaning of section 5.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Edward L. Smith and *Mr. James I. Rooney* for the Commission.

Mr. J. Francis Harter and *Mr. John G. Lesswing*, of Buffalo, N. Y., for New York State Wholesale Confectionery Associations, Inc., Rochester Area Wholesale Confectioners Association, Capital District Wholesale Confectioners Association, Inc., Central New York Wholesale Confectionery Distributors, Inc., Greater Buffalo Wholesale Confectioners Association, Inc., and various officers and members thereof.

Mr. William E. Shoudy, of Syracuse, N. Y., for Mohawk Valley Wholesale Confectioners Association, and its officers; Northern New York Wholesale Confectioners Association, Inc., and its officers, and, along with *Schrivver & Eager*, of Middletown, N. Y., and *Mr. Louis G. Kustas*, of Poughkeepsie, N. Y., for Hudson Valley Candy Distributors Association and Eugene Brock, president thereof.

Mr. William A. Shoemaker, of Hamburg, N. Y., for Southern Tier Candy Distributors Association, and Chauncey M. Wirth, president, and Owen S. Smith, secretary and treasurer thereof.

McCurn, Farnham & Martineau, of Syracuse, N. Y., for Empire State Candy Club, Inc., its officers and members.

Mr. W. Joseph Shanley, of Troy, N. Y., for Max Brownstein.

Fitzsimmons & Keefe, of Albany, N. Y., for Dearstyne Bros., and its officers.

Mr. James M. O'Hara, of Utica, N. Y., for Rome Tobacco Co., Inc., and its officers.

Mr. A. Raymond Cornwall, of Watertown, N. Y., for Clark-Flynn Candy Co., Inc.

Schrivver & Eager, of Middletown, N. Y., also for John W. Cutter, Frank Martin, Chris Vasiliow, Ernest L. Haynes, J. W. Horton, G. W. Mosher, Eugene Block and William B. Adelman, trading as Middletown Candy Co.; H. B. & F. W. Weist; J. M. Kelly Co.; Kustus & Chambers; John H. Haas and Henrietta S. Ketterer, trading as Kerrenbacker Candy Co.; S. Roy & Co., Inc., and its officers; Shapiro Bros., Inc., and its officers; and Kingston Candy Co., and its officers.

Mr. Stephen K. Bock, of Poughkeepsie, N. Y., for Adam Winter.

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Mr. Isaac Allison, of Elmira, N. Y., for Empire Tobacco Co., Inc., and its officers.

Mr. A. A. Montebello, of Elmira, N. Y., for Federal Stores of Elmira.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Sayles, Flannery, Collins & Evans*, of Elmira, N. Y., for C. M. & R. Tompkins and its officers.

Mr. Jacob Weissfeld, of Buffalo, N. Y., for Henry Schrieber.

Miss Edna M. Landers for John C. Beltz.

Mr. Maurice Yellen, of Buffalo, N. Y., for David Ellis, David Gross, Arthur Haas, and E. J. Murray trading as Donovan & Haas, Seymour Morris and Martin Morris, and also along with *Mr. J. Francis Harter* and *Mr. John G. Lesswing* for Irving Morris.

Mr. Leonard R. Lipowicz, of Buffalo, N. Y., for Salesmen's Grocery Corp. and its officers.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent New York State Wholesale Confectionery Associations, Inc., with principal office and place of business in Syracuse, N. Y., and the regional members thereof, to wit, the Rochester Area Wholesale Confectioners Association, with principal office and place of business in Rochester, N. Y., the Capital District Wholesale Confectioners Association, Inc., with principal office and place of business in Troy, N. Y., the Mohawk Valley Wholesale Confectioners Association, with principal office and place of business in Utica, N. Y., the Central New York Wholesale Confectionery Distributors, Inc., with principal office and place of business in Syracuse, N. Y., the Northern New York Wholesale Confectioners Association, Inc., with principal office and place of business in Watertown, N. Y., the Hudson Valley Candy Distributors Association, with principal office and place of business in Newburgh, N. Y., the Southern Tier Candy Distributors Association, with principal office and place of business in Wellsboro, Pa., the Greater Buffalo Wholesale Confectioners Association, Inc., with principal office and place of business in Buffalo, N. Y., and the Empire State Candy Club, Inc., with principal office and place of business in Utica, N. Y., and the officers and numerous members thereof,¹ engaged at their respective places of business in the sale of confectionery and candy and allied products at wholesale as

¹ Specified in the complaint proper but omitted herefrom in the interest of brevity.

hereinafter specified, with combining or conspiring to suppress, hinder, and lessen competition in interstate commerce in the sale and distribution of confectionery, candy, and allied products through the establishment of respondents as a class of "recognized" wholesalers, distributors, and brokers in their respective trading areas, preventing competitors from obtaining candy, etc., directly from the manufacturers, fixing, and establishing uniform prices to be observed by the members and preventing others from selling at lower prices, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, as set forth in paragraphs 11 to 17 of the complaint proper, as follows:²

PARAGRAPH 11. The aforesaid members of the "Rochester Association," "Capital Association," "Mohawk Association," "Central Association," "Northern Association," "Hudson Association," "Southern Association," and "Greater Buffalo Association" are now and for more than three years last past have been engaged, at the respective places of business of such members, in the sale of confectionery, candy and allied products at wholesale between and among the various States of the United States and in the District of Columbia, causing such confectionery, candy, and allied products when sold by them to be transported from their respective places of business to the purchasers thereof, some located in the States in which the aforesaid members have their respective places of business and others located in various other States of the United States and in the District of Columbia. The aforesaid members of the aforesaid associations purchase the products in which they deal, from the manufacturers thereof located for the most part in States other than the States of New York and Pennsylvania. Such manufacturers ship their said products, when purchased by the aforesaid members of the aforesaid associations, from their respective places of business in such other States to the aforesaid members of the aforesaid Associations in the States of New York and of Pennsylvania. In the course and conduct of their aforesaid respective businesses, the aforesaid members of the aforesaid respective associations, but for the matters and things hereinafter set out, would be and would have been naturally and normally in competition with the other members of their respective associations in price, and are in such competition with other individuals, partnerships, and corporations engaged in purchasing confectionery, candy, and other allied products in the States of New York and Pennsylvania from manufacturers thereof located in other

² Paragraphs 1 to 10 of the complaint as hereinabove indicated set forth at length the corporations and associations and their members joined as respondents.

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States, and the resale thereof in the States of New York and Pennsylvania and various other States of the United States and in the District of Columbia. The members of each of the aforesaid "Rochester Association," "Capital Association," "Mohawk Association," "Central Association," "Northern Association," "Hudson Association," "Southern Association," and "Greater Buffalo Association," constitute a large and important part of all the brokers, distributors, and wholesalers in confectionery, candy, and allied products in the territory in which the members of the aforesaid respective associations are located and in the aforesaid areas in which they trade, and such members of each of the aforesaid associations 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 the areas in which the members of the aforesaid respective associations trade. The members of each of the aforesaid associations as allied and banded together in their respective associations, are enabled thereby more effectively to exercise control and influence such trade and commerce for the promotion and enhancement of their own respective volumes of trade and profits. The volume of consumption of confectionery, candy, and allied products in the areas in which the members of the respective associations trade and the volume of trade and commerce dealt in by the members of such associations in, to, and from each of the said respective areas constitute an important part of the trade and commerce of the United States in the confectionery industry. The trade areas in which the members of each of the aforesaid associations do business 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 areas and also by those in various other States, particularly those of the eastern portion of the United States. The volume of business done by the members of all of the aforesaid associations is a substantial part of all the business done by wholesalers of candy, confectionery, and allied products in the States of New York and Pennsylvania.

PAR. 12. On or about September 1933, the aforesaid members of the "Rochester Association" entered into, have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves, to prevent competing dealers from obtaining candy, confectionery and allied products directly from the manufacturers thereof; to establish themselves as a class of "recognized" wholesalers, distributors, and brokers of said products in the areas in which they trade; to fix and establish uniform prices at which the said members of said "Rochester 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 said members of said "Rochester Association." To carry out the aforesaid purposes the said respondents have done, among others, the following acts and things:

(a) By agreement among themselves have fixed and maintained and still fix, and maintain uniform prices for confectionery, candy and allied products sold by them and by each of them, and induced manufacturers not to sell to anyone who sold or who would resell at less than the price so fixed.

(b) Fixed and maintained prices, induced manufacturers not to sell to anyone not adhering to the prices so fixed. Exacted and procured pledges and other promises of agreements from each such "recognized" dealer and each member of "Rochester Association" and from manufacturers and producers of candy, confectionery 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 12 hereof.

(c) 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 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 not so reported.

(d) 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 "Rochester Association."

(e) Held meetings of "Rochester 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, advised and informed such manufacturers and producers of the names of said

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"recognized" dealers in said trade area of said 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 candy, confectionery, and allied 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 "Rochester 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 12 hereof.

PAR. 13. In September 1933, or thereabouts, respondents named in paragraphs 3, 4, 5, 6, 7, 8, and 9^{*} hereof, by and through their respective associations described in those paragraphs, entered into, have since carried out and are still carrying out agreements, combinations, understandings, and conspiracies among the memberships of each of the aforesaid respective associations, through and by their respective memberships in their respective associations, each of such agreements, combinations, understandings, and conspiracies being of the same kind and nature as that alleged in paragraph 12 hereof to have been entered into and carried out by respondents named in paragraph 2 hereof, using the same means in carrying out the aforesaid agreements, combinations, understandings, and conspiracies as those alleged in paragraph 12 hereof to have been used by the respondents named in paragraph 2 hereof, the description of the conspiracy, agreement, combination, and understanding described in paragraph 12 hereof being hereby adopted as the description and allegation of each of the aforesaid agreements, combinations, understandings, and conspiracies entered into respectively by the members of the "Rochester Association," "Capital Association," "Mohawk Association," "Central Association," "Northern Association,"

^{*} Makeup and practices of respondent Empire State Club, Inc., joined, along with members thereof in Par. 10, are described *infra* in Par. 15.

"Hudson Association," "Southern Association," and "Greater Buffalo Association," and being hereby made a part hereof as if the said allegations in paragraph 12 hereof were set forth in full herein.

PAR. 14. In November 1933, or thereabouts, the respondents named in paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 hereof organized respondent New York State Wholesale Confectionery Association, which they caused to be incorporated on May 11, 1934, under the corporate name New York State Wholesale Confectionery Associations, Inc., the corporation described in paragraph 1 hereof. Said respondent New York State Wholesale Confectionery Associations, Inc., and its predecessor were organized for the purpose of assisting the respondents named in paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 hereof in carrying out the agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof and have assisted by the following means the respondents named in paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 hereof in carrying out the various agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof;

(a) By inducing manufacturers not to sell to anyone who had resold or who would resell at less than prices fixed by the aforesaid agreements, combinations, understandings, and conspiracies.

(b) By inducing manufacturers not to sell to dealers who were not "recognized" dealers.

(c) By concerted action, by boycott, threats of boycott, and other united action against manufacturers to induce and to require them to agree to and to conform to and to support the agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof.

(d) By using and engaging in other acts, cooperative and concerted action and cooperative methods and practices in promoting, establishing, and carrying out the programs, agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof.

PAR. 15. Various of the members of the respondent "Empire State Club" are brokers in candy, confectionery, and allied products, while the others are factory salesmen of various manufacturers of candy, confectionery, and allied products. Said respondent "Empire State Club" was organized for the purpose of assisting the respondents named in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 hereof in carrying out the agreements, understandings, combinations, and conspiracies described in paragraphs 12 and 13 hereof, and has assisted in the carrying out of such agreements, combinations, understandings, and conspiracies in the following manner:

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(a) By refusing to sell and by inducing manufacturers not to sell to anyone who had resold or who would resell at less than prices fixed by the aforesaid agreements, combinations, understandings, and conspiracies.

(b) By refusing to sell and by inducing manufacturers not to sell to dealers who were not "recognized" dealers.

(c) By using and engaging in other acts, cooperative and concerted action and cooperative methods and practices in promoting, establishing, and carrying out the programs, agreements, combinations, understandings, and conspiracies described in paragraphs 12 and 13 hereof.

PAR. 16. The capacity, tendency, and effect of said agreements, combinations, understandings, and conspiracies, and the said acts and practices of respondents set forth in paragraphs 12, 13, 14, and 15 hereof are and have been in the New York and Pennsylvania area and other related or connected territory; to close and curtail sundry outlets within the States of New York and Pennsylvania for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the States of New York and Pennsylvania; to monopolize, in said respondents 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 States of New York and 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 confectionery, candy, and allied products; to prejudice and injure the public and manufacturers, producers, dealers, brokers, distributors, and wholesalers and others who did not conform to respondent's program, or who did not desire, but were compelled, to conform to said program, and to spread into States other than New York and Pennsylvania the same methods of boycott and "white-listing" employed by respondents.

PAR. 17. The above alleged acts and things done by respondents as set forth in paragraphs 12, 13, 14, and 15 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 on the 6th day of November 1935, issued and served its complaint in this proceeding upon the following named associations, their respective officers and members, respondents:

New York State Wholesale Confectionery Associations, Inc., hereinafter referred to as the State Association,

Rochester Area Wholesale Confectioners Association, hereinafter referred to as the Rochester Association,

Capital District Wholesale Confectioners Association, Inc., hereinafter referred to as the Capital District Association,

Mohawk Valley Wholesale Confectioners Association, hereinafter referred to as the Mohawk Association,

Central New York Wholesale Confectionery Distributors, Inc., hereinafter referred to as Central New York Association,

Northern New York Wholesale Confectioners Association, Inc., hereinafter referred to as Northern New York Association,

Hudson Valley Candy Distributors Association, hereinafter referred to as the Hudson Valley Association,

Southern Tier Candy Distributors Association, hereinafter referred to as the Southern Tier Association,

Greater Buffalo Wholesale Confectioners Association, hereinafter referred to as Greater Buffalo Association,

Empire State Candy Club, Inc., hereinafter referred to as the Candy Club.

After the issuance of said complaint, respondents, State Association, Rochester Association, Capital District Association, Northern New York Association, Central New York Association, Hudson Valley Association, Greater Buffalo Association, and the Candy Club filed their respective answers thereto. Subsequently the State Association, its officers and members; the Rochester Association, and its officers; the Capital District Association, and its officers; the Central New York Association, and its officers; the Northern New York Association, and its officers; the Greater Buffalo Association, and its officers; and the Hudson Valley Association, and its president, Eugene Brock, filed motions for leave to withdraw said respective answers, as to them, and to file substituted answers, as to them, which motions were duly allowed, and said substituted answers received and filed. The Mohawk Valley Association, and the Southern Tier Asso-

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ciation, having filed no answer to the complaint within the time limited therefor, subsequently said Mohawk Valley Association, and its president, Walter E. Bates, and its secretary, Charles E. Allen, and the Southern Tier Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, filed motions for leave to file answers, as to them, to said complaint, which motions were duly allowed, and said answers received and filed.

In the said answers of Mohawk Valley Association and Southern Tier Association, and in the said substituted answers heretofore mentioned, it was stated that they and each of them desire to and hereby waive hearing on the charges set forth in the complaint herein; that they and each of them refrain from contesting the proceeding; that they and each of them admit all the material allegations of the complaint to be true; that they and each of them consent that the Commission may, without trial, without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion therein, and issue and serve upon the said New York State Wholesale Confectionery Associations, its officers and members, and upon the Rochester Area Wholesale Confectioners Association, and its officers, upon the Capital District Wholesale Confectioners Association, and its officers, upon Central New York Wholesale Confectionery Distributors, Inc., and its officers, upon Northern New York Wholesale Confectioners Association, and its officers, upon Greater Buffalo Wholesale Confectioners Association, and its officers, upon Empire State Candy Club, Inc., and its officers, upon the Mohawk Valley Wholesale Confectioners Association, and its president, Walter E. Bates, and its secretary, Charles E. Allen, upon the Hudson Valley Candy Distributors Association, and its president, Eugene Brock, and upon the Southern Tier Candy Distributors Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, an order to cease and desist from the methods of competition alleged in the complaint; and further in said answers and substituted answers it was stated that they and each of them as aforesaid mentioned agree that the complaint herein be considered as amended as of the date of its issuance, so that as amended the word "not" follows the word "wholesalers" in the next to the last line of subparagraph (c) of paragraph 12 of the complaint herein. The said complaint having been so amended, thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answers and substituted answers, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, State Association, Rochester Association, Capital District Association, Central New York Association, Northern New York Association, Greater Buffalo Association, and Candy Club are corporations duly organized, existing, and doing business by virtue of, and under the laws of the State of New York. Respondents, Mohawk Valley Association, Hudson Valley Association, and Southern Tier Association are unincorporated voluntary associations. Walter E. Bates is president, and Charles E. Allen is secretary of the said Mohawk Valley Association; Eugene Brock is the president of the said Hudson Valley Association; Chauncey M. Wirth is president, and Owen S. Smith is secretary and treasurer of the said Southern Tier Association.

PAR. 2. The members of the aforementioned Rochester Association, Capital District Association, Mohawk Association, Central New York Association, Northern New York Association, Hudson Valley Association, Southern Tier Association, and Greater Buffalo Association are now and have been for three years last past engaged, in the respective places of business of such members, in the sale of candy and allied products at wholesale between and among the various States of the United States, and in the District of Columbia, causing such candy and allied products being sold by them to be transported from their respective places of business to the purchasers thereof, some located in States in which the aforesaid members have their respective places of business, and others located in various other States of the United States, and in the District of Columbia. The aforesaid members of the aforesaid associations purchase products in which they deal from the manufacturers thereof located for the most part in States other than the States of New York and Pennsylvania. Such manufacturers ship their said products, when purchased by the aforesaid members of the aforesaid associations, from their respective places of business in such other States to the aforesaid members of the aforesaid associations in the State of New York. In the course and conduct of their aforesaid respective businesses, the aforesaid members of the aforesaid and respective associations, but for the matters and things hereinafter set out, would be and would have been naturally and normally in competition with the other members of their respective associations in price, and in such competition with other individuals, partnerships and corporations engaged in purchasing candy, confectionery, and allied products in the States of New York and Pennsylvania from manufacturers thereof located in other States, and the resale thereof in the States of New York and Pennsyl-

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vania and various other States of the United States, and in the District of Columbia. The members of each of the aforesaid associations constitute a large and important part of all the distributors and wholesalers in candy, confectionery, and allied products in the territory in which the members of the aforesaid respective associations are located and in the aforesaid areas in which they trade, and such members of each of the aforesaid associations 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 the areas in which the members of the aforesaid respective associations trade. The aforesaid associations as allied and banded together in the State Association are enabled thereby more effectively to exercise control and influence such trade and commerce for the promotion and enhancement of their own respective volume of trade and profit. The volume of consumption of candy, confectionery, and allied products in the areas in which the respective associations trade, and the volume of trade and commerce dealt in by such associations in, to, and from each of the said respective areas constitute an important part of the trade and commerce of the United States in the confectionery industry. The trade area in which each of the aforesaid associations do business is a large important outlet in the course of the sale of candy, confectionery, and allied products by manufacturers, producers, and distributors within said trade area, and also by those in various other States, particularly those east of the Mississippi River. The volume of business done by the members of all of the aforesaid associations is a substantial part of all the business done by wholesalers of candy, confectionery, and allied products in the States of New York and Pennsylvania.

PAR. 3. All of the respondent associations, with the exception of the respondent Candy Club, were formed on or about September 1933, at the outset as unincorporated voluntary associations; later, said respondent associations with the exception of the respondents, Mohawk Valley Association, Hudson Valley Association, and Southern Tier Association, became incorporated under the laws of the State of New York. Since their inception on or about September 1933, all of the respondent associations entered into and have since carried out an agreement, combination, understanding, and conspiracy among themselves to prevent competing dealers not members of the aforesaid named association from obtaining candy, confectionery, or allied products directly from the manufacturers thereof; to establish themselves as a class of "recognized" wholesalers, distributors, and brokers of the said products in the areas in which they trade; to fix and establish uniform prices at which the said members of the aforesaid asso-

ciations should sell said products, and to prevent others from selling at less prices, and by the aforesaid means to suppress, hinder, and lessen competition in substantial interstate commerce in the selling and distribution of said products in the aforesaid territories served by the said associations. In order to carry out the aforesaid purposes the said respondent associations have done, among others, the following acts and things:

(a) By agreement among themselves have fixed and maintained uniform prices for candy, confectionery, and allied products sold by them, and induced manufacturers not to sell to anyone who sold or who would resell at less than the price so fixed.

(b) Fixed and maintained prices, induced manufacturers not to sell to anyone not adhering to the prices so fixed, exacted, and procured pledges and other promises of agreement from each such "recognized" dealer and each member of the respective associations, and from manufacturers and producers of candy and allied products to the effect that such dealers, members, manufacturers and producers would support, adhere to, and enforce the foregoing program of the respondent associations set forth in paragraph 2 hereof.

(c) Printed and published lists (so-called "white lists") containing names of "recognized" dealer members of said associations, so as to include in said list only so-called "legitimate, regular, or recognized" dealers, distributors, and wholesalers of said products, and supplied said lists to the aforesaid manufacturers, and in addition sent letters to the aforesaid manufacturers calling to their attention certain wholesalers, dealers, or distributors who were not members of the aforesaid associations, intending by said letters to induce said manufacturers to cease dealing with and refuse to open accounts with the dealers, distributors, and wholesalers mentioned in the aforesaid letters.

(d) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, and 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 support and enforce the said program of the respective associations, and to refrain from selling said products to other dealers, distributors, and wholesalers who were not members of said associations.

(e) Held meetings of the respective associations to devise means and methods of asserting influence, pressure, coercion, and other means of inducing, coercing, and requiring manufacturers, producers, brokers, dealers, and wholesalers and others engaged in said confectionery trade to abide by and adhere to said program.

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(f) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, advised and informed such manufacturers or producers of the names of said "recognized" dealers in said trade area of said 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 the respondent associations; and also advised such manufacturers and producers that their sale and distribution of candy and allied products direct to said "nonrecognized" dealers and purchasers, or their failure to conform to the aforesaid program in the distribution of their products would be considered by respondents and such "recognized" dealers as "unfriendly" acts against the associations and such "recognized" dealers.

(g) Denied membership in the respective aforesaid associations of dealers who failed to support, abide by, or carry out said program in the aforesaid respective associations, and to expel from membership of the said associations those dealers who failed to carry out the aforesaid program.

PAR. 4. The membership of the Candy Club are brokers in candy and allied products, while others are factory salesmen of various manufacturers of candy and allied products. Respondent Candy Club was organized for the purpose of assisting the respective associations named in paragraph 3 hereof in carrying out the agreement, understanding, combination, and conspiracy described in paragraph 3 hereof, and has assisted in carrying out such agreement, combination, understanding, and conspiracy in the following manner:

(a) By refusing to sell and by inducing manufacturers not to sell to anyone who had resold or who would resell their products at less than prices fixed by the aforesaid associations.

(b) By refusing to sell and by inducing manufacturers not to sell to dealers who were not "recognized" dealers.

(c) By refusing to call for orders upon dealers or distributors who were not members of the respective associations named in paragraph 3 hereof.

PAR. 5. The capacity, tendency, and effect of said agreements, combinations, understandings, and conspiracies, and the said acts and practices of respondents as hereinbefore mentioned are and have been in the New York area and other related or connected territories; 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

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New York; to monopolize, by said respondent associations and "recognized" dealers, the business of dealing in and distributing candy, confectionery, and allied products; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the 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 suppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling and distributing candy, confectionery, and allied products; to prejudice and injure the public and manufacturers, producers, dealers, distributors, and wholesalers, and others who do not conform to the respondents' program, or who do not desire, but were compelled to conform to respondents' program, and to spread into States other than New York the same methods of boycotting and "white listing" employed by the respondent associations.

CONCLUSION

The acts and practices and the things done by the respective associations described in the foregoing findings of fact are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition clearly within the intent and meaning, and in violation of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST AND ORDER OF DISMISSAL

This matter coming on to be heard by the Commission upon the complaint filed herein on November 6, 1935, and the answers and substituted answers of the New York State Wholesale Confectionery Associations, Inc., its officers and members; the Rochester Area Wholesale Confectioners Association, and its officers; Capital District Wholesale Confectioners Association, Inc., and its officers; Central New York Wholesale Confectionery Distributors, Inc., and its officers; Northern New York Wholesale Confectioners Association, Inc., and its officers; Greater Buffalo Wholesale Confectioners

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Association, and its officers; Empire State Candy Club, Inc., and its officers; Mohawk Valley Wholesale Confectioners Association, and its president, W. E. Bates, and its secretary, Charles E. Allen; Hudson Valley Candy Distributors Association, and its president, Eugene Brock; and the Southern Tier Candy Distributors Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, in which they state that they desire to and hereby waive hearing on the charges set forth in the complaint herein; that they and each of them refrain from contesting the proceeding; that they and each of them admit all the material allegations of the complaint to be true; that they and each of them consent that the Commission may, without trial, and without further evidence, and without any intervening procedure, make and enter its findings as to the facts and conclusion therein, and issue and serve upon the said New York State Wholesale Confectionery Associations, Inc., its officers and members; the Rochester Area Wholesale Confectioners Association, and its officers; the Capital District Wholesale Confectioners Association, Inc., and its officers; the Central New York Wholesale Confectionery Distributors, Inc., and its officers; the Northern New York Wholesale Confectioners Association, Inc., and its officers; the Greater Buffalo Wholesale Confectioners Association, and its officers; the Empire State Candy Club, Inc., and its officers; the Mohawk Valley Wholesale Confectioners Association, and its president, Walter E. Bates, and its secretary, Charles E. Allen; The Hudson Valley Candy Distributors Association, and its president, Eugene Brock; and the Southern Tier Candy Distributors Association, and its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith, an order to cease and desist from the methods of competition alleged in the complaint.

Now, therefore, it is hereby ordered, That the respondent, New York State Wholesale Confectionery Associations, Inc., its officers and members; the Rochester Area Wholesale Confectioners Association, and its officers; the Capital District Wholesale Confectioners Association, Inc., and its officers; the Central New York Wholesale Confectionery Distributors, Inc., and its officers; the Northern New York Wholesale Confectioners Association, Inc., and its officers; the Greater Buffalo Wholesale Confectioners Association, and its officers; the Mohawk Valley Wholesale Confectioners Association, its president, Walter E. Bates, and its secretary, Charles E. Allen; the Hudson Valley Candy Distributors Association, and its president, Eugene Brock; and the Southern Tier Candy Distributors Association, its president, Chauncey M. Wirth, and its secretary and treasurer, Owen S. Smith; in connection with the purchase by them, or by any of them,

of confectionery, candy, or allied products in interstate commerce, 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) Combining, conspiring, or uniting in a common course of action, and cooperating or confederating together, among themselves 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;

(2) Publishing lists (so-called "white lists") containing the names of "recognized" dealers, members, or respondent associations, 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 or establish uniform prices at which members of respondent associations or others should sell such products;

(4) Using any other cooperative or coercive means to suppress competition in price, or in the sale and distribution of such products in the States of New York or Pennsylvania, or in any other area.

It is further ordered, That the Empire State Candy Club, Inc., and its officers, in connection with the sale or offering for sale of candy, confectionery, or allied products in interstate commerce, cease and desist from:

(1) Refusing to sell or inducing manufacturers not to sell to anyone who has resold, or who would resell, their products at less than prices fixed by the New York State Wholesale Confectionery Association, Inc., the Rochester Area Wholesale Confectioners Association, the Capital District Wholesale Confectioners Association, Inc., the Mohawk Valley Wholesale Confectioners Association, the Central New York Wholesale Confectionery Distributors, Inc., the Northern New York Wholesale Confectioners Association, Inc., the Hudson Valley Candy Distributors Association, the Southern Tier Candy Distributors Association, and the Greater Buffalo Wholesale Confectioners Association;

(2) Refusing to sell, and inducing manufacturers not to sell to dealers who were not "recognized" dealers;

(3) Refusing to call for orders upon dealers or distributors who were not members of respective associations named in subdivision 1 of this order; and

(4) Using any other cooperative or coercive means to suppress competition in the sale and distribution of confectionery, candy, or allied products in the States of New York or Pennsylvania, or in any other area.

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It is hereby further ordered, That said respondents shall within 60 days from the day of the date of 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.

And it appearing to the Commission that compliance by the aforementioned respondents with the aforesaid order to cease and desist will effectively terminate the use by all the individual respondents, as well as by the corporate and unincorporated associations and their respective officers, of the methods of competition alleged in the complaint.

Now, therefore, it is hereby ordered, That the complaint in this proceeding, as amended, be and the same is hereby dismissed as to the individual respondents.

Complaint

IN THE MATTER OF

RETA TERRELL SLOAN, TRADING AS RETA TERRELL

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

Docket 2760. Complaint, Apr. 10, 1936—Decision, June 2, 1936

Where an individual engaged in the manufacture, distribution and sale of various cosmetic preparations, including "Austrian Formula," "Deep Tissue Cream," "Astringent Concentrate," and "Orange Blossom Skin Tonic"—Represented, in advertisements and in newspapers, periodicals of general circulation and in advertising literature circulated through the mails and otherwise, and upon the containers of said various preparations, that they possessed such properties and ingredients that they would serve as a food for the skin, muscles, or tissues and have a beneficial effect in feeding, toning, and firming and filling out and tightening the lines of broken tissues and would serve to restore elasticity to the skin, etc., and fill out hollows therein and eliminate dryness and remove wrinkles from and revitalize the skin, etc., and have a beneficial effect in the treatment of various conditions of the skin, muscles, or tissues, as above referred to;

Facts being none of said preparations possessed properties or contained ingredients so as to bring about such results, and said preparations do not penetrate the skin beyond the epidermis or outer layer thereof or reach the muscles and tissues underlying the same, or beneficially affect or nourish such underlying muscles or the pores or tissues or have a beneficial effect in feeding, nourishing, etc., the tissues, etc., or otherwise as above claimed;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous belief that the aforesaid various items contained medicinal ingredients of such character and in such quantity as to effect such results, and that use of said products would actually produce such various benefits claimed, and with effect of inducing the purchase of substantial quantities of said various preparations by such public acting on such mistaken belief, and of diverting thereby a substantial volume of trade from competitors who do not in any way falsely represent their respective products; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. J. T. Welch 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, having reason to believe that Reta Terrell Sloan, trading as Reta Terrell, hereinafter referred to as "re-