

sold same, pursuant thereto, at said price;

With effect of unduly tending to substantially lessen, restrict and suppress competition in interstate sale of flannel skirts throughout the United States and particularly in the New England States, in which they constituted practically all of the manufacturers thereof:

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. Charles F. Diggs*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. William M. Silverman, of Boston, Mass., for Gordon Maid Skirt Co., Inc. and *Hurwitz & Hurwitz*, of Boston, Mass., for Louis Maltzman.

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 Boston Sportswear Company, Robert Hamilt, an individual trading as Bobby Sportswear Company, Gordon Maid Skirt Company, Inc., Louis Wadman Company, a corporation trading as Oxford Sportswear Company, Louis Maltzman, an individual trading as Simmons Sportswear Company, Schwartz Sportswear Company, Inc., Weatherproof Clothing Mfg. Company, and David A. Sallop, an individual trading as Peerless Sportswear Company, hereinafter referred to as respond-

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ents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Boston Sportswear Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 72 Kneeland Street, Boston, Mass.

PAR. 2. Said respondent, Robert Hamilt, is an individual trading as the Bobby Sportswear Company with his principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 3. Said respondent, Gordon Maid Skirt Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 4. Said respondent, Louis Wadman Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 75 Kneeland Street, Boston, Mass., and doing business under the trade name of the Oxford Sportswear Company.

PAR. 5. Said respondent, Louis Maltzman, is an individual trading as Simmons Sportswear Company with his principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 6. Said respondent, Schwartz Sportswear Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 75 Kneeland Street, Boston, Mass.

PAR. 7. Said respondent, Weatherproof Clothing Mfg. Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business located at 146 Court Street, Brockton, Mass.

PAR. 8. Said respondent, David A. Sallop, is an individual trading as Peerless Sportswear Company with his principal office and place of business located at 1394 Dorchester Avenue, Dorchester, Mass.

PAR. 9. Each and all of the said respondents have for more than one year last past been and now are engaged in the manufacture of flannel skirts which the said respondents sell to purchasers located in States other than the State of Massachusetts, causing said flannel skirts when sold to be transported from the place of manufacture within the State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts.

PAR. 10. Said respondents, on or about October 5, 1935, entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of flannel skirts to purchasers thereof located throughout the several States of the United States, as aforesaid by agreeing to quote and sell said flannel skirts at a uniform price of \$16.50 per dozen. Thereafter each of the said respondents distributed to their respective customers identical written notice to the effect that the price of flannel skirts would be \$16.50 per dozen, and that the same had been agreed to by the said respondents and pursuant thereto sales were made of the said skirts at the price of \$16.50 per dozen.

PAR. 11. The result of the acts of the said respondents, as hereinbefore set out in paragraph 10, has been and now is to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of flannel skirts throughout the United States and particularly in the New England States where the respondents constitute practically all of the manufacturers of flannel skirts.

PAR. 12. The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and to the retail dealer handling flannel skirts in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and 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 April 3, 1936, issued and served its complaint in this proceeding upon the respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents answered the said complaint, and in said answers admitted the allegations of the complaint and the facts therein set forth to be true, and stated that they waived hearing on the charges set forth in the complaint, that they refrain from contesting the proceeding, and that they consented that the Commission make, enter, issue and serve upon them without hearing or other intervening procedure, findings as to the facts and an order to cease and desist from

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the methods of competition alleged in the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, 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. Respondent, Boston Sportswear Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass.

PAR. 2. Respondent, Robert Hamilt, is an individual trading as the Bobby Sportswear Company with his principal office and place of business in Boston, Mass.

PAR. 3. Respondent, Gordon Maid Skirt Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass.

PAR. 4. The respondent, Louis Wadman Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass., and doing business under the trade name of the Oxford Sportswear Company.

PAR. 5. Respondent, Louis Maltzman, is an individual trading as Simmons Sportswear Company with his principal office and place of business in Boston, Mass.

PAR. 6. Respondent, Schwartz Sportswear Company, Inc., is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in Boston, Mass.

PAR. 7. Respondent, Weatherproof Clothing Mfg. Company, is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business at Brockton, Mass.

PAR. 8. Respondent, David A. Sallop, is an individual trading as Peerless Sportswear Company with his principal office and place of business in Dorchester, Mass.

PAR. 9. Each and all of the said respondents have for more than one year last past been, and now are engaged in the manufacture of flannel skirts which the said respondents sell to purchasers located in States other than the State of Massachusetts, causing said flannel skirts when sold to be transported from the place of manufacture within the State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts.

PAR. 10. In the course and conduct of their business, the said respondents were at all times herein referred to in competition with

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other corporations, firms, associations, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 11. Said respondents, on or about October 5, 1935, entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of flannel skirts to purchasers thereof located throughout the several States of the United States, as aforesaid by agreeing to quote and sell said flannel skirts at a uniform price of \$16.50 per dozen. Thereafter each of the said respondents distributed to their respective customers identical written notice to the effect that the price of flannel skirts would be \$16.50 per dozen, and that the same had been agreed to by the said respondents and pursuant thereto sales were made of the said skirts at the price of \$16.50 per dozen.

PAR. 12. The results of the acts of the said respondents, as hereinbefore set out in paragraph 11, has been to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of flannel skirts throughout the United States and particularly in the New England States where the respondents constitute practically all of the manufacturers of flannel skirts.

CONCLUSION

The aforesaid acts and practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and to competitors of the respondents, and are unfair methods of competition in commerce and constitute a 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

The respondents in and by their answers having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in their said answers that they do not contest the said proceeding, and having admitted in their answers the truth of the allegations and facts set forth in the complaint, and having consented in their said answers that the Commission, without hearing or further procedure, might make, enter, issue and serve upon said respondents findings of fact and conclusion and an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises:

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It is hereby ordered, That the respondents, their officers, agents, representatives and employees, in connection with the offering for sale, and sale of their flannel skirts in interstate commerce, forthwith cease and desist from:

(1) Any understanding, agreement, combination or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of flannel skirts in interstate commerce, by agreeing to quote and sell said flannel skirts at a uniform price.

(2) Distributing to their respective customers identical notice to the effect that the price of flannel skirts would be at a uniform price.

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

Syllabus

IN THE MATTER OF
METROPOLITAN SURGICAL INSTRUMENT COUNCIL,
INC., ET AL.

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

Docket 2409. Complaint, May 28, 1935—Order, Aug. 21, 1936.

Consent order requiring respondent council, its officers, agents, representatives, and employees in connection with the sale in interstate commerce of surgical instruments and appliances to cease and desist from—

- (a) Combining or uniting to fix and establish uniform prices at which members of respondent association or others should sell such products;
- (b) Printing and publishing lists containing the names of dealer members of said association, so as to include in said lists only so-called regular or "recognized" dealers, distributors, and wholesalers of said products, and to exclude therefrom, and thereby to identify as such, so-called "non-recognized" dealers, distributors, and wholesalers of said products, and supplying said lists to manufacturers of surgical instruments and appliances;
- (c) Maintaining coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers, and others to induce and require them to refrain from selling said products to other dealers, distributors, and wholesalers who are not members of said association; and
- (d) Procuring the adherence of members of said association to a schedule of prices agreed upon, by a system of fines exacted from members making sales of said commodities at prices less than those set out in said schedules; and

Ordered further that the complaint against certain individuals named in the complaint as officers and former officers and leaders in the activities of respondent association be and the same is dismissed for the reason that the order against the trade respondents, their owners, officers, employees, and agents, adequately and effectively restores free and open competition between and among all of the respondents engaged in selling surgical instruments and appliances in interstate commerce; and

Ordered further that the complaint against respondent Wasserman, trading as City Surgical Co., be and it is dismissed for the reason that said respondent did not take membership nor participate in any activities of the Metropolitan Surgical Instrument Council, Inc.; and

Ordered further that complaint against respondent Rifkin be dismissed for the reason that said respondent retired from business in the month of December 1934, and did not participate in the activities of the Metropolitan Surgical Instrument Council, Inc.

Before *Mr. W. W. Sheppard* and *Mr. Edward M. Averill*, trial examiners.

Mr. P. C. Kolinski for the Commission.

Mr. Sanford H. Cohen and *Mr. George Cohen*, of New York City, for Metropolitan Surgical Instrument Council, Inc., and various officers and members thereof.