

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.

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Cotton, Brenner & Wrigley, of New York City, for Oscar Cochran and Cochran Physicians' Supplies, Inc.

Mr. John L. Lockwood, of New York City, for E. G. Pfarre and George Tiemann & Co.

Mr. Philip Wagner, of New York City, for Jacob Beeber.

Mr. William Helfer, of New York City, for Samuel Wasserman.

Mr. James A. Dougherty, of Greenville, Conn., for Margaret A. Dougherty.

Mr. Leon Forst, of New York City, for Eugenie Siegel.

Mr. Sylvester Benjamin, of Brooklyn, N. Y., for Low Surgical Co. and Thiemann, Boettcher & Co., Inc.

Mr. Charles M. Werner, of New York City, for Werner Surgical Supplies, Inc.

Morris & Silverman, of New York City, for Lester Van Wagner.

Mr. Milton J. Pashman, of Passaic, N. J., for Morris Minsky and Robert Caverly.

Mr. Sidney B. Rosenthal, of Paterson, N. J., for Service Surgical Supply Co., and also along with *Mr. J. Leon Friedman*, of New York City, for Samuel G. Krebs.

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 of 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, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Metropolitan Surgical Instrument Council, Inc., is a corporation incorporated under the laws of the State of New Jersey, whose membership is composed of individuals, partnerships, and corporations with their respective places of business in the cities of New York and Brooklyn, State of New York, and the cities of Newark, Passaic, Paterson, Elizabeth, and Jersey City in the State of New Jersey, engaged in selling surgical instruments and appliances to doctors, hospitals, and individuals located respectively in said States, in neighboring States, and throughout the world. Said members are banded together in said Metropolitan Surgical Instrument Council, Inc., hereinafter referred to as "Association", for the purpose of promoting their common interests and business affairs.

Respondents Ben Gordon, Oscar Cochran, John C. Lindsey, C. Invedinato, Edward Low, Anthony J. Jamison, and H. S. Nussbaum, are respectively president, 1st vice president, 2nd vice president, 3rd vice president, treasurer, recording secretary, and corresponding secretary, of said association, in charge of conducting and administering its activities and affairs.

Respondents Nathan S. Low, Victor W. Filler, Benjamin J. Perlstein, E. G. Pfarre, S. B. Amsterdam, George Dornhaefer, George J. Young, Maurice F. Powell, and Robert Horwitz are former officers and leaders in the activities of said association. The members of the association are as follows:

Respondent Jacob Beeber, an individual doing business under the trade name and style of J. Beeber Company, with his place of business located in New York City, N. Y.;

Respondent Samuel Wasserman, an individual doing business under the trade name and style of City Surgical Company, with his place of business located in New York City, N. Y.;

Respondent Cochrane Physicians' Supplies, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Margaret A. Dougherty, an individual doing business under the trade name and style of James T. Dougherty Medical Center, with her place of business located in New York City, N. Y.;

Respondent F. Eissner & Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Meyer A. Feinberg, an individual with his place of business located in New York City, N. Y.;

Respondent Eugenie Siegel, an individual doing business under the trade name and style of Fordham Surgical Store, with her place of business located in New York City, N. Y.;

Respondent Harry M. Falk, an individual doing business under the trade name and style of Guarantee Truss Company, with his place of business located in New York City, N. Y.;

Respondent Harold Surgical Corporation, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Raymond Kramer, an individual with his place of business located in New York City, N. Y.;

Respondent Rose Kramer, an individual doing business under the trade name and style of Kramer Surgical Stores, with her place of business located in New York City, N. Y.;

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Respondent Samuel G. Krebs, an individual doing business under the trade name and style of S. G. Krebs Company, with his place of business located in New York City, N. Y.;

Respondent N. S. Low, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Low Surgical Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Manhattan Surgical Instrument Company, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent T. H. McKenna, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent F. L. Noble Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent M. B. Picker Corporation, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Barney B. Rifkin, an individual with his place of business located in New York City, N. Y.;

Respondent George Tiemann & Company, a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Thiemann, Boettcher & Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent United Surgical Supplies Corp., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Werner Surgical Supplies, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Wregg, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in New York City, N. Y.;

Respondent Robert Horwitz, an individual doing business under the trade name and style of Bedford Surgical Company, with his place of business located in Brooklyn, N. Y.;

Respondents Meyer Palinsky and Ellis Palinsky, copartners, doing business under the trade name and style of Brill Surgical Instrument Company, with their place of business located in Brooklyn, N. Y.;

Respondent Cornell Laboratories, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Charles C. Edinger, an individual doing business under the trade name and style of Charles C. Edinger Company, with his place of business located in Brooklyn, N. Y.;

Respondent Anthony J. Jamison, an individual doing business under the trade name and style of Jamison Laboratories, with his place of business located in Brooklyn, N. Y.;

Respondent The John C. Lindsay Company, a corporation organized under the laws of the State of New York, and doing business under the firm name and style of Lindsay Laboratories, with its office and principal place of business located in Brooklyn, N. Y.;

Respondents Bernard S. Cohen, Irving M. Cohen and Leo Cohen, copartners, doing business under the trade name and style of Long Island Surgical Supply Company, with their place of business located in Brooklyn, N. Y.;

Respondent Modern Hospital Supply Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent National Surgical Stores, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Park Surgical Company, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Powell Surgical Co., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Roberts & Quinn, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Charles Kazdin, an individual doing business under the trade name and style of Unity Surgical Supply Co., with his place of business located in Brooklyn, N. Y.;

Respondent Lester Van Wagner, an individual doing business under the trade name and style of Van Wagner & Co., with his place of business located in Brooklyn, N. Y.;

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Respondent West End Surgical Co., Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Benjamin Weisberg, an individual doing business under the trade name and style of White Surgical Company, with his place of business located in Brooklyn, N. Y.;

Respondent George J. Young, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located in Brooklyn, N. Y.;

Respondent Amsterdam Bros., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located in Newark, N. J.;

Respondents Morris Minsky and Robert Caverly, copartners, doing business under the trade name and style of Bellevue Surgical Supply Company, with their place of business located in Passaic, N. J.;

Respondent Cosmevo Surgical Supply Company, a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Paterson, N. J.;

Respondent Livezey Surgical Supply, Inc., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Newark, N. J.;

Respondent Medical Service Co., Inc., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Newark, N. J.;

Respondent New Jersey Medical Supply Co., Inc., a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Jersey City, N. J.;

Respondent Service Surgical Supply Company, a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at Paterson, N. J.;

Respondent Frank Scharfenberger, an individual doing business under the trade name and style of Scharfenberger's, with his place of business located at Elizabeth, N. J.;

Respondent William R. Walsh, an individual doing business under the trade name and style of William R. Walsh Company, with his place of business located at Newark, N. J.

PAR. 2. The aforesaid respondent members of the Metropolitan Surgical Instrument Council, Inc., are dealers, distributors, and wholesalers of surgical instruments and appliances. Said respondent members purchase aforesaid products in which they deal directly and immediately from manufacturers thereof, located in various States, and said manufacturers ship said products when so purchased from their respective places of business in such other States to said mem-

bers in the States of New York and New Jersey. In the course and conduct of their aforesaid respective businesses, respondent members, but for the matters and things hereinafter set out, would have been and would still be naturally and normally in competition with each other and with other individuals, partnerships, and corporations also engaged in the purchase of surgical instruments and appliances from aforesaid manufacturers located in States other than the State of New York, and the resale thereof in the State of New York and neighboring States. Respondent members, by virtue of their membership in said association, designate themselves as "recognized" dealers, distributors, and wholesalers as distinguished from such surgical instrument dealers 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 dealers in surgical instruments and appliances in the New York trade area; and 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 to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits. Mail orders form a large proportion of the business in this industry and New York City is known as the center of such industry in this country. In the manufacture of surgical instruments there is a diversity of appliances, and most manufacturers concentrate on the marketing of a patented or specialized device. No manufacturer markets a full line of surgical instruments, and it is therefore necessary for dealers in surgical instruments to purchase their stock from many sources of supply.

PAR. 3. In October 1933, or thereabouts, the respondents named in paragraph 1 hereof united in a common course of action and combined, conspired and confederated together and with others to prevent said competing dealers in surgical instruments and appliances, mentioned in paragraph 2 hereof, from obtaining surgical instruments and appliances directly from aforesaid manufacturers thereof; to establish respondent members as a class of "recognized" surgical instrument and appliance dealers in the said New York City trade area; to fix and establish uniform prices at which said members of respondent association should sell said products and to prevent said members and others from selling at less prices and by and through the aforesaid means to suppress, hinder, and lessen competition in substantial commerce in the selling and distribution of said products in

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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 or agreements from each such "recognized" dealer and each member of respondent association and from manufacturers of surgical instruments and appliances to the effect that such dealers, members, and manufacturers 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, 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 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, 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, distributors and wholesalers who were not members of said association.

(d) Held meetings of respondent association, its members, officers, and executive committee, to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, dealers, and wholesalers and others engaged in said surgical instrument and appliance trade and industry to abide by and adhere to said program.

(e) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, informed and advised such manufacturers of the names of said "recognized" dealers in said New York City trade area, and of respondents' purpose and determination to insist upon and require such manufacturers 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 that their sale and distribution of surgical instruments and appliances direct to certain

non-recognized 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.

(f) 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.

(g) Fixed and established by agreement schedules of uniform minimum prices for the sale of the commodities dealt in by them in the territory of said association. The prices thus established were enhanced beyond the prices which would prevail under natural and normal competition in said industry in the absence of said price agreements.

(h) Procured the adherence of members of said association to and the maintenance of the 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.

(i) 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. The Code of Fair Competition for the Surgical Distributors Trade was approved August 24, 1934, 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 Code specifically prohibits monopolistic practices and the oppression of and discrimination against small enterprises; and said Code further specifically prohibits interference with sources of supply and discrimination against competitors not affiliated with trade associations. The acts and practices of respondents, as hereinbefore set forth, were, and are, in direct violation of the express provisions of said Code of Fair Competition, are in no manner whatsoever justified by any interpretation of such Code, and are contrary to the plain intent and meaning of said Code of Fair Competition.

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 New York City trade area and other related or connected territory: to close and curtail sundry outlets

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within the States of New York and New Jersey 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 New Jersey; to monopolize, in said respondent members and recognized dealers, the business of dealing in and distributing surgical instruments and appliances; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said surgical instrument and appliance industry in the States of New York and New Jersey, and to deprive the purchasing 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 surgical instruments and appliances; to hold at an artificially high level prices for such surgical instruments and appliances to hospitals, the medical profession and the purchasing public; and to deprive the purchasing public and the medical profession and hospital institutions of the benefits to accrue from competition among dealers in the surgical instrument and appliance trade.

PAR. 6. The above alleged acts and things done by respondent as set forth in paragraphs 3 and 4 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

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" (38 Stat. 717), the Federal Trade Commission on May 28, 1935, issued its complaint against the above named respondents, in which it is alleged that the respondents are and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

The following respondents filed answers:

Metropolitan Surgical Instrument Council, Inc., Harry M. Falk, trading as Guarantee Truss Company; Harold Surgical Corpora-

tion; Rose Kramer, trading as Kramer Surgical Stores; N. S. Low, Inc.; T. H. McKenna, Inc.; Meyer Palinsky and Ellis Palinsky, co-partners trading as Brill Surgical Instrument Co.; Charles C. Edinger, trading as Charles C. Edinger Co.; Anthony T. Jamison, trading as Jamison Laboratories; The John C. Lindsay Co., corporation trading as Lindsay Laboratories; Modern Hospital Supply Co., Inc.; National Surgical Stores, Inc.; West End Surgical Co., Inc.; Amsterdam Bros.; Cosmevo Surgical Supply Company; Livezey Surgical Supply, Inc.; Frank Scharfenberger, trading as Scharfenberger's; Medical Service, Inc.; Robert Horwitz, trading as Bedford Surgical Co.; Bernard S., Irving M. & Leo Cohen, trading as Long Island Surgical Supply Co.; Park Surgical Co., Inc.; Roberts & Quinn, Inc.; Charles Kazdin, trading as Unity Surgical Supply Co.; and New Jersey Medical Supply Co., Inc., appearing by Sanford H. Cohen, their attorney;

Jacob Beeber, trading as J. Beeber Co., appearing by Philip Wagner, his attorney;

Eugenie Siegel, trading as Fordham Surgical Store, appearing by Leon Forst, her attorney;

George Tiemann & Company, a corporation, appearing by John W. Lockwood, its attorney;

Samuel G. Krebs, trading as S. G. Krebs Company, appearing by J. Leon Friedman, his attorney;

Werner Surgical Supplies, Inc., a corporation, appearing by Charles M. Werner, its attorney;

Lester Van Wagner, trading as Van Wagner & Co., appearing by Morris & Silverman, his attorneys;

Morris Minsky and Robert Caverly, trading as Bellevue Surgical Supply Company, appearing by Milton J. Pashman, their attorney;

Service Surgical Supply Co., Inc., a corporation, appearing by Sidney Rosenthal, its attorney;

George J. Young, Inc., a corporation, appearing by Sylvester Benjamin, its attorney;

F. Eissner & Co., Inc.;

Manhattan Surgical Instrument Company;

F. L. Noble Co., Inc.;

Barney B. Rifkin;

United Surgical Supplies Corporation;

Wregg, Inc.;

Cornell Laboratories, Inc.;

Individuals named as officers and active members of the Metropolitan Surgical Instrument Council, Inc., made appearance and filed answers by attorneys Sanford H. Cohen and John L. Lockwood. Re-

spondent Samuel Wasserman, an individual trading under the firm name and style of City Surgical Company, filed an affidavit disclaiming any membership in respondent Metropolitan Surgical Instrument Council, Inc.

On June 3, 1936, a hearing was convened for the taking of testimony as to the following ten respondents who had failed to appear or answer: Cochrane Physicians' Supplies, Inc.; Margaret A. Dougherty, trading as James T. Dougherty Medical Center; Meyer A. Feinberg; Raymond Kramer; Low Surgical Co., Inc.; M. B. Picker Corporation; Thiemann, Boettcher & Co., Inc.; Powell Surgical Co.; Benjamin Weisberg, trading as White Surgical Company; William R. Walsh, trading as William R. Walsh Company. During the progress of the hearing these ten respondents decided not to contest the proceeding and signed consent answers under Rule V (b) of the Rules and Practice prevailing at the time this proceeding was originally noticed for hearing.

On the 21st day of August 1936, the Federal Trade Commission granted leave to respondents, who signed consent answers, to file such answers; and granted leave to respondents, who had previously filed answers, to file amended answers, wherein the respondents consent that the Federal Trade Commission may make, enter and serve upon them, in accordance with the provisions of paragraph (b) of Rule V of the Rules of Practice of the Commission, an order to cease and desist from the practices alleged in the complaint in connection with the sale in interstate commerce of surgical instruments and appliances, and the Commission being fully advised in the premises;

It is now ordered, That the respondent, Metropolitan Surgical Instrument Council, Inc., and its officers, agents, representatives and employees, cease and desist and the respondents, Jacob Beeber, trading as J. Beeber Co.; Cochrane Physicians' Supplies, Inc.; Margaret A. Dougherty, trading as James T. Dougherty Medical Center; F. Eissner & Co., Inc.; Meyer A. Feinberg; Eugenie Siegel, trading as Fordham Surgical Store; Harry M. Falk, trading as Guarantee Truss Company; Harold Surgical Corporation; Raymond Kramer; Rose Kramer, trading as Kramer Surgical Stores; Samuel G. Krebs, trading as S. G. Krebs Company; N. S. Low, Inc.; Low Surgical Co., Inc.; Manhattan Surgical Instrument Company; T. H. McKenna, Inc.; F. L. Noble Co., Inc.; M. B. Picker Corporation; George Thiemann & Company; Thiemann, Boettcher & Co., Inc.; United Surgical Supplies Corp.; Werner Surgical Supplies, Inc.; Wregg, Inc.; Robert Horwitz, trading as Bedford Surgical Co.; Meyer Palinsky and Ellis Palinsky, trading as Brill Surgical Instrument Co.; Cornell

Laboratories, Inc.; Charles C. Edinger, trading as Charles C. Edinger Company; Anthony J. Jamison, trading as Jamison Laboratories; the John C. Lindsay Company, a corporation trading as Lindsay Laboratories; Bernard S. Cohen, Irving M. Cohen and Leo Cohen, copartners, trading as Long Island Surgical Supply Co.; Modern Hospital Supply Co., Inc.; National Surgical Stores, Inc.; Park Surgical Co., Inc.; Powell Surgical Co.; Roberts & Quinn, Inc.; Charles Kazdin, trading as Unity Surgical Supply Co.; Lester Van Wagner, trading as Van Wagner & Co.; West End Surgical Co., Inc.; Benjamin Weisberg, trading as White Surgical Company; George J. Young, Inc.; Amsterdam Bros.; Morris Minsky and Robert Caverly, copartners, trading as Bellevue Surgical Supply Company; Cosmevo Surgical Supply Company; Livezey Surgical Supply, Inc.; Medical Service Co., Inc.; New Jersey Medical Supply Co., Inc.; Service Surgical Supply Co., Inc.; Frank Scharfenberger, trading as Scharfenberger's and William R. Walsh, trading as William R. Walsh Company, jointly and severally as members of said Metropolitan Surgical Instrument Council, Inc., their agents, employees and representatives in connection with the sale and the advertising and offering for sale of surgical instruments and appliances in interstate commerce, do cease and desist from:

(1) Combining or uniting to fix and establish uniform prices at which members of respondent association or others should sell such products;

(2) 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;

(3) 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;

(4) 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.

It is further ordered, That the complaint against the individual respondents, Ben Gordon, Oscar Cochran, John C. Lindsey, C. Invedinato, Edward Low, Anthony J. Jamison, H. S. Nussbaum, Na-

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than S. Low, Victor W. Filler, Benjamin J. Perlstein, E. G. Pfarre, S. B. Amsterdam, George Dornhaefer, George J. Young, Maurice F. Powell and Robert Horwitz, be and the same hereby 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.

It is further ordered, That the complaint against Samuel Wasserman, an individual trading under the firm name and style of City Surgical Company, be and the same hereby is dismissed, it appearing that this respondent did not take membership nor participate in any activities of the Metropolitan Surgical Instrument Council, Inc.

It is further ordered, That the complaint against Barney B. Rifkin be and the same hereby is dismissed, it appearing that this respondent retired from business in the month of December 1934, and did not participate in the activities of the Metropolitan Surgical Instrument Council, Inc.

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

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IN THE MATTER OF
WILSON CHEMICAL COMPANY, INC.

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

Docket 2874. Complaint, July 11, 1936—Decision, Aug. 24, 1936

Where a corporation engaged in sale and distribution of salves and miscellaneous merchandise premiums to purchasers through "return or remit" plan, under which it advertises for agents in newspapers and periodicals and furnishes same with boxes of its said salve, with allowance of thirty days for sale thereof and remittance of portion of proceeds agreed on, or return of unsold merchandise, and under which no deposit is required and products remain its property until paid for, and "agent" may either remit stated sum of amount collected after deducting his commission, or entire amount and receive a premium for his services, or entire proceeds with additional stated sums in payment for premium offered by it in its catalog sent to its said agents—

- (a) Represented in its advertising that, through sale of a specified number of boxes, certain depicted or described premiums, such as express wagons, radios, air rifles, and other merchandise, might be obtained, through such statements as "STREAMLINE 1935 Model WAGON * * * Electric Headlights, Lifelong Lubrication, Instrument Board, * * * America's Greatest Coaster Wagon. IT'S REALLY A WHIZ! Simply give away FREE 12 beautiful pictures with 12 boxes of our famous WHITE CLOVERINE SALVE * * * which you sell to friends at 25¢ a box (with picture FREE) and remit us as per big premium plan book * * *", and other similar statements informing the prospective agent that by selling a certain specified number of boxes he might obtain a guitar or movie machine or rifle or other articles;

Facts being that representations as to number of boxes required to be sold and amount of money required to be remitted for premiums were false, misleading and untrue, in that various sums of cash were required in addition to cash remittance realized by sale of salve as advertised, and in some instances sale of additional boxes was demanded, with remission of the additional money acquired by selling same; and

- (b) Called for additional sums, in almost every case in which a premium was selected, to cover cost of postage or freight thereon, of which facts or conditions it did not advise prospective agents in its advertising matter, but deferred giving notice thereof to the sending of its catalog to those agents making inquiry in response to such advertising;

With tendency to confuse, mislead, and deceive members of the public into belief that, upon making sales of specified amounts of its said salve, the various premiums advertised as a reward therefor would be received unconditionally, when such was not the case, and to induce members of the public to answer its advertisements and sell its said products, as above set