

IN THE MATTER OF
WESTINGHOUSE ELECTRIC & MANUFACTURING
COMPANY ET AL.

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

Docket 2941. Complaint, Nov. 13, 1936¹—Decision, Apr. 2, 1937

Where eight corporations engaged in manufacture and sale of condensers, largest consumers of which included public utilities, whether public or privately owned, and municipal, State, and Federal Governments, and in connection with which not only initial cost, but efficiency and performance guarantees, with their decided effect upon cost of operation, are vital factors and become inseparable from the prices to be paid therefor to prospective purchasers thereof, and constituting a group so large and influential in the manufacture of such products that they were able to influence and control the flow of trade thereof between and among various States and in the District of Columbia, and, but for the below set forth practices, and prior thereto, in competition with one another as to prices in the sale thereof; for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination and understanding among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted from the purchasers of condensers, and thus to fix delivered prices of such products entering into commerce among and between the various States and in the aforesaid District, and, pursuant thereto—

- (1) Fixed and maintained, by agreement among themselves, uniform delivered prices for such products, and adopted as their own, and adhered to, the delivered price sheets compiled by one of their number, notwithstanding the fact the same were unrelated to their respective individual costs;
- (2) Fixed and maintained, by agreement among themselves, uniform performance guarantees for such condensers, and adopted as their own confidential performance data compiled by one of their number, notwithstanding the fact the same were unrelated to the actual or true theoretical performance of their said respective products;
- (3) Conferred, compared and discussed, before submitting delivered prices in competitive bidding for condensers, with each other, the delivered prices to be charged therefor, and agreed, as a result thereof, to submit identical bids, not only for such products, but for the numerous "extras" necessary for the proposed installation thereof; and
- (4) Took disciplinary action against any of their number who failed to abide by the delivered prices, in accordance with said agreement, combination and understanding;

With the result that business of dealing in and distributing said products was monopolized in themselves, competition in industry in question was unreasonably lessened, eliminated, restrained, stifled, and hampered, and competition therein suppressed, and purchasing and consuming public was deprived of advantages in price, service and other considerations which they

¹ Amended complaint.

would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry, and said agreements, etc., and acts and practices, otherwise operated as a restraint upon and a detriment to the freedom of fair and legitimate competition therein, and obstructed the natural flow of trade in the channels of commerce, and with capacity and tendency so to monopolize, etc., as hereinabove set forth:

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

Mr. James I. Rooney for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for General Electric Co.

Cravath, deGersdorff, Swaine & Wood and *Mr. Harold Smith*, of New York City, for Westinghouse Electric & Manufacturing Co.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for Allis-Chalmers Manufacturing Co.

Alter, Wright & Barron, of Pittsburgh, Pa., for Elliott Co.

Mr. Charles Neal Barney, of New York City, for Worthington Pump & Machinery Corp.

Mr. Chester A. Adee and *Mr. Charles Kingsley*, of New York City, for Ingersoll-Rand Co.

Fraser, Speir, Meyer & Kidder, of New York City, for Foster-Wheeler Corp.

Adams, Childs, McKaig & Lukens, of Philadelphia, Pa., for C. H. Wheeler Manufacturing Co.

Mr. Gilbert H. Montague, of New York City, for Ross Heater & Manufacturing Co.

Rounds, Dillingham, Mead & Neagle, of New York City, for The Heat Exchange Institute.

AMENDED 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 General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Ingersoll-Rand Company, Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ross Heater & Manufacturing Company, And The Heat Exchange Institute, hereinafter referred to as "respondents," have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in

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respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General Electric Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in Schenectady, in said State.

Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in Jeanette, in said State.

Respondent, Worthington Pump & Machinery Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business at Harrison, in the State of New Jersey.

Respondent, Foster-Wheeler Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at New York City, in said State.

Respondent, C. H. Wheeler Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State.

Respondent, Ingersoll-Rand Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at Jersey City, in said State.

Respondent, Ross Heater & Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, in said State.

The Heat Exchange Institute, is an unincorporated trade association organized on or about June 1, 1933, with its principal place of business at New York City, in the State of New York. Its officers now are James E. Watson, president, Russell C. Jones, vice president, and Charles H. Rohrbach, secretary and treasurer.

PAR. 2. Respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Elliott Company, and Allis-Chalmers Manufacturing Co., are now, and since their organization have been engaged in the manufacture, at their respective places of business, of "turbine-generators" and in the sale thereof throughout the various States of the United States, and in the District of Columbia. Respondents Westinghouse Electric & Manufacturing Co., Elliott Company, Allis-Chalmers Manufacturing Co., Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company, are now, and since their organization, have been engaged in the manufacture at their respective places of business of "condensers" and in the sale thereof throughout the various States of the United States and in the District of Columbia.

In the course and conduct of their respective businesses said respondents for more than five years last past have caused and still cause their products, when sold by them, to be transported from the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than the State from which said shipment was made and in the District of Columbia.

Among the largest consumers of turbine-generators and condensers are public utilities, either publicly or privately owned, municipal, State, and Federal Governments.

PAR. 3. Respondents constitute a group so large and influential in the manufacture of turbine-generators and condensers that they are able to influence and control the flow and trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. The said respondents were, prior to 1933, in competition as to price with one another in the sale of turbine-generators and condensers in commerce as hereinabove set out, and but for the combination, agreement, understanding, and conspiracy hereinafter described said respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of these products, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect in the cost of operation, are vital factors and become inseparable from the prices to be paid for these products. Thus, of several generators or condensers all selling for one delivered price, yet with varying performance guarantees, those with the more favorable performance guarantees would be selected by the prospective purchasers.

PAR. 4. During the year 1933 respondents referred to in paragraph 2 hereof for the purpose of eliminating price competition among them-

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selves entered into and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and to maintain, and by which they have fixed and maintained, uniform delivered prices to be exacted by them from the purchasers of turbine-generators and condensers, and thus to fix the delivered price of turbine-generators and condensers entering into commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy the said respondents have among other things done the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform delivered prices for turbine-generators and condensers.

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform performance guarantees for said turbine-generators and condensers.

(c) Adopted as their own and adhered to the delivered pricing sheets compiled by one of the respondents although the same is unrelated to the individual costs of the respective respondents.

(d) Adopted as their own the confidential performance data compiled by one of the said respondents although the same is unrelated to the actual or true theoretical performance of the turbine-generators and condensers of the respective respondents.

(e) Conferred, compared, and discussed before submitting delivered prices in competitive bidding for turbine-generator sets and condensers with each other the delivered prices to be charged for said products and agreed, as a result thereof, to submit identical delivered bids, not only for said turbine-generators and condensers, but for the numerous "extras" necessary for the proposed installation of said generators and condensers, and to submit identical performance guarantees for said generators and condensers.

(f) Took disciplinary action against any of said respondents who fail to abide by the delivered prices in accordance with said agreement, understanding, and conspiracy.

PAR. 5. Respondent, The Heat Exchange Institute, of which those respondents engaged in the manufacture of condensers are a separate branch, was organized for the purpose of more effectively aiding said respondents to carry out the agreement, combination, understanding, and conspiracy set forth in paragraph 4 hereof, in so far as the same applies to the sale and distribution of condensers, and to the subjection of said respondents to penalties for failure to adhere to the agreed delivered prices.

The capacity, tendency and effect of said agreement, combination, understanding, and conspiracy, and the said acts and practices of the respondents set forth in paragraph 4 hereof, are and have been to monopolize in said respondents the business of dealing in and distributing turbine-generators and condensers; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the 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 said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

PAR. 6. The above alleged acts and things done by respondents as set forth herein are monopolistic practices and to the prejudice and injury of the public and 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 9th day of October 1936, issued and served its complaint in this proceeding upon the following named respondents: Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ross Heater & Manufacturing Company, Ingersoll-Rand Company, and The Heat Exchange Institute. On the 13th day of November 1936, an amended complaint was issued and served in this proceeding upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 9th day of March 1937, said respondents filed their answers, in which answers, with the exception of The Heat Exchange Institute, they stated that it is not their desire or intention to violate Section 5 of the act commonly called The Federal Trade Commission Act, approved September 26, 1914; that they desire to waive hearing on the charges set forth in said

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amended complaint, and not to contest the proceedings, and therefore, but solely for the purpose of disposing of this proceeding, they consent that all the material facts alleged in the amended complaint, insofar as the same are connected with the business of selling or offering for sale condensers, may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act, but not within the intent and meaning of any other law of the United States; that said answers do not constitute admission of any conclusion of law or fact by said respondents for any other purpose, nor are they to be used against it in any other proceedings, suit, or action. And for the sole purpose of avoiding trouble and expense incident to the further continuance of this proceeding they waive hearing herein and refrain from contesting this proceeding, and consent that the Commission may, without trial, or without the taking of evidence or any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any method of competition alleged in the amended complaint insofar as the same is connected with the business of selling or offering for sale condensers which constitute violations of Section 5 of said Federal Trade Commission Act; that any and all admissions given by them herein are given solely upon the conditions and for the purposes aforesaid, and insofar as they constitute admissions are not made as, nor are they to be taken to be admissions of fact for any other purpose whatsoever.

Thereafter this proceeding regularly came on for final hearing before the Commission on said amended complaint and said 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. Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Pennsylvania, with its principal office and place of business in Jeannette, in said State.

Respondent, Worthington Pump & Machinery Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business at Harrison, in the State of New Jersey.

Respondent, Foster-Wheeler Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at New York City, in said State.

Respondent, C. H. Wheeler Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State.

Respondent, Ingersoll-Rand Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at Jersey City, in said State.

Respondent, Ross Heater & Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, in said State.

The Heat Exchange Institute is an unincorporated trade association organized on or about June 1, 1933, with its principal place of business at New York City, in the State of New York.

PAR. 2. Respondents, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Co., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company, are now, and since their organization have been, engaged in the manufacture of condensers, and in the sale thereof in the various States throughout the United States and in the District of Columbia.

Said respondents cause their condensers when sold by them to be transported in commerce throughout the United States, to the purchasers thereof located at points in various States of the United States other than the State in which said shipment was made and in the District of Columbia.

Among the largest consumers of condensers are public utilities, either publicly or privately owned, municipal, State and Federal Governments.

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PAR. 3. These respondents constitute a group so large and influential in the manufacture of condensers that they are able to influence and control the flow of trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. These respondents were, prior to 1933, in competition as to prices with one another in the sale of condensers, in commerce as hereinbefore set forth, and but for the combination, agreement, and understanding hereinafter described, these respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of condensers, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect upon the cost of operation, are vital factors and become inseparable from the prices to be paid for said condensers.

PAR. 4. During the year 1933, these respondents, for the purpose of eliminating price competition among themselves, entered into, and have since carried out, and at the date of the amended complaint herein were still carrying out an agreement, combination, and understanding among themselves to fix and maintain, and by which they have fixed and maintained, uniform delivered prices to be exacted by them from the purchasers of condensers, and thus to fix the delivered prices of condensers entering into commerce between and among the various States of the United States and of the District of Columbia. Pursuant to, and for the purpose of carrying out said agreement, combination and understanding, these respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform delivered prices for condensers;

(b) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform performance guarantees for said condensers;

(c) Adopted as their own, and adhered to, the delivered pricing sheets compiled by one of the respondents although the same are unrelated to the individual costs of the respective respondents;

(d) Adopted as their own the confidential performance data compiled by one of the said respondents, although the same are unrelated to the actual or true theoretical performance of the condensers of the respective respondents;

(e) Conferred, compared, and discussed, before submitting delivered prices in competitive bidding for condensers, with each other, the delivered prices to be charged for said products, and agreed, as a result thereof, to submit identical bids not only for said condensers,

but for the numerous "extras" necessary for the proposed installation of said condensers;

(f) Took disciplinary action against any of said respondents who failed to abide by the delivered prices in accordance with the said agreement, combination and understanding.

PAR. 5. The capacity, tendency, and effect of said agreement, combination and understanding and the said acts and practices of these respondents as set forth in paragraph 4 hereof, are, and have been to monopolize in said respondents the business of dealing in and distributing condensers; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the 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 said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

These respondents engaged in the condenser industry constitute only that section of the Heat Exchange Institute known as the Condenser Section, and compliance with the order to cease and desist by these respondents engaged in the condenser industry will be as effective as if the order were directed against the Heat Exchange Institute.

CONCLUSION

The aforesaid acts and practices of respondents Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Co., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company are to the prejudice of the public and of said respondents' competitors 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on October 9, 1936, the amended complaint filed herein on November 13, 1936, and the answers of respondents Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp..

Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company and Ross Heater & Manufacturing Company, herein, filed herein on March 9, 1937, in which said respondents, insofar as this proceeding relates to the business of selling or offering for sale condensers, state that they desire to waive hearing on the charges set forth in the amended complaint insofar as the same refers to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the 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," and that for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding they refrain from contesting this proceeding, and consent that all the material facts alleged in said amended complaint may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act but not within the intent and meaning of any other law of the United States, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that said respondents consent that the Commission may without trial, without the taking of evidence, and without any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any methods of competition alleged in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act; and

Respondents Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company and Ross Heater & Manufacturing Company, in their answers deny, as to themselves, every allegation in the amended complaint insofar as they relate to the business of selling or offering for sale turbine-generators;

Now, therefore, it is hereby ordered, That the respondents Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company, and their successors, officers, agents and employees forthwith cease and desist in connection with the business of selling or offering for sale condensers in interstate commerce, from doing and performing, by agreement, combination, or conspiracy between or among any two or more of said respondents the following acts and things:

1. Fixing and maintaining uniform delivered prices;

2. Fixing and maintaining uniform performance guarantees where the same are unrelated to the actual or true theoretical performance of the condensers of the respective respondents;

3. Adopting as their own and adhering to the delivered pricing sheets of any of the respondents;

4. Submitting uniform or identical delivered prices in competitive bidding for condensers, and for the extra equipment necessary for their installation, and submitting uniform or identical performance guarantees for said condensers where the same are unrelated to the actual or true theoretical performance of the condensers of the respective respondents;

5. Imposing, attempting or threatening to impose, by any means whatsoever, any disciplinary action on any of the respondents who fail to abide by any delivered prices as stated in paragraphs 1, 3, and 4 hereof;

Provided, however, That nothing contained in this order shall prohibit the respondents, or any of them, from exchanging scientific, technical or engineering data or information with respect to the actual performance, rating, or capacity of condensers manufactured by them or any of them or from participating with one another, or with third persons, in discussions, meetings, or studies of a scientific, technical or engineering character for the purpose of improving, standardizing, or simplifying their products or testing methods or facilities relating thereto, defining technical terms, or promoting safety, such as:

(1) Determining the highest actual efficiency practically obtainable by condensers of various types or sizes and under various conditions, and (2) standardizing the various types or sizes of condensers and specifying the actual performance or characteristics which a condenser should attain under given conditions in order to be designated as of a specific type or size, and provided further that nothing in this order contained shall prohibit the respondents, or any of them, from using, in such manner as any of said respondents may individually so desire to do, the results of the technical or engineering data and information above referred to; but this proviso is in no way to be construed as permitting the said several respondents named in this order to accomplish unlawfully what is specifically prohibited in paragraphs (2) and (4) of this order; and

Provided further, That the prohibitions of this order shall not apply to any lawful action taken under patents or license agreements relating thereto.

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It is hereby further ordered, That all respondents, except the Heat Exchange Institute, shall, within 60 days 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

Since the respondents engaged in the condenser industry constitute only that section of the Heat Exchange Institute known as the Condenser Section, and since compliance with the order to cease and desist by these respondents engaged in the condenser industry will be as effective as if the order were directed against the Heat Exchange Institute;

It is hereby further ordered, That the complaint in this proceeding as amended be, and the same is hereby dismissed as to the respondent the Heat Exchange Institute.

Complaint

IN THE MATTER OF

SAMUEL BRIER, DOING BUSINESS AS SAMUEL BRIER & COMPANY AND QUAKERTOWN LUGGAGE 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 3049. Complaint, Feb. 4, 1937—Decision, Apr. 2, 1937

Where an individual, and a corporation, headed and controlled, managed and operated by him, engaged in the manufacture, distribution, and sale of handbags, suitcases, and other luggage to jobbers and retailers, portion of which luggage, thus manufactured and sold by them, was made from top grain leather and portion of which was made from the inferior and less durable and costly split or inner side leather—

Placed upon pieces of said latter luggage, covered with said split leather, conspicuous stamp reading "Warranted Cowhide," "Genuine Cowhide," "All Leather," "Genuine Leather," and thereby represented that such pieces were covered with the preferred top grain leather;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by them was covered with the outside or top layer of the hide, and with the result of enabling retailers and jobbers to mislead and deceive the purchasing public as to the quality of the material with which such luggage was covered, and of placing in the hands of retailers and dealers an instrument and means whereby they might commit a fraud upon members of such public, and with the further result, as a direct consequence of the misleading and erroneous belief induced as aforesaid, that a number of the consuming public bought a substantial volume of their said luggage, and trade was unfairly diverted to them from those likewise engaged in the sale of luggage covered with split hide, and who truthfully labeled the same, and from those also engaged in the sale of top grain leather-covered luggage; to the substantial injury of competition in commerce:

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

Mr. George Foulkes for the Commission.

Bender, Rubin & Simons, of Philadelphia, Pa., for respondent.

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 Samuel Brier, an individual doing business as Samuel Brier & Company and Quakertown Luggage Company, Inc., a corporation hereinafter re-