

Syllabus

IN THE MATTER OF

CALIFORNIA PACKING CORPORATION, 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 2786. Complaint, Apr. 25, 1936—Decision, June 30, 1937

Where (1) a corporation which (a) was engaged in packing and distributing, and selling and transporting by truck, railway, and steamship lines, a wide line of food products, consisting principally of dried fruits and canned fruits, vegetables, fish, pineapples, and coffee, (b) was one of the largest packers and distributors of dried fruits and vegetables in the world and was, and had been, for a number of years, an important factor in the Hawaiian pineapple industry and in the packing of sardines and tuna fish, (c) owned, controlled, and operated more than one hundred canning factories, fruit drying plants, and other factories in California, Wisconsin, Illinois, Florida, New York, and other States scattered across the country, and in the Territories of Alaska and Hawaii, in which were packed, for sale and shipment in wholesale and retail trade throughout the several States and in foreign countries, food products under such brands or trade names as "Del Monte," "Sunkist," and others; and (2) its subsidiary, (a) engaged exclusively in the packing and selling of salmon, with nine factories in Alaska and one on Puget Sound, and (b) owner of a terminal corporation engaged as a public wharfinger on the east side of San Francisco Bay in the operation and maintenance of such necessary facilities as wharves, sheds, warehouses, and switch tracks, in competition with a number of other similarly engaged terminals; and together engaged, in the course and conduct of their businesses, in the purchase of substantial quantities of raw materials and manufactured products, such as wood, paper, and fiber boxes, containers, and cartons, tin, steel, copper, paint, and numerous other articles, from the manufacturers and producers thereof located throughout the several States and in foreign countries, for utilization in the several manufacturing processes of their said products, and in substantial competition, in the course and conduct of their said businesses, with others in the various States engaged in the canning and packing of fruits, vegetables, fish, and other products, and in sale and distribution thereof to jobbers and wholesalers throughout the several States and in foreign countries, and also in purchasing substantial quantities of raw materials and other manufactured products, as hereinbefore set forth, from manufacturers and producers throughout the several States, and in selling products to many of such industrial concerns, and in utilizing instrumentalities of distribution and transportation similar to those made use of by said first named corporation, as above set forth, but without engaging in such practices as those below described; acting directly and through and in cooperation with six individuals, general officers and directors of said corporation and subsidiary, or, as case might be, purchasing agent for said corporation, vice president, director, and general manager of such subsidiary, and former traffic director and president of said terminal corporation, and present traffic manager of corporation first named—

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- (a) Sought to induce, coerce, and compel, and induced, coerced, and compelled, a substantial number of large industrial concerns and shippers of substantial tonnages of freight, including companies from which they and their competitors purchased supplies of raw materials and manufactured products as aforesaid, and which companies would, but for the activities herein described, normally and usually route their products through various and respective terminals located on San Francisco Bay and rivers tributary thereto, to divert and shift said large industrial concerns' routing of shipments so as to utilize the facilities of their own aforesaid terminal to the exclusion of said others through (1) promises or assurances that they would purchase the products of such concerns or increase volume of purchases therefrom, in the event said concerns routed shipments of merchandise and products sold and shipped by them and others subject to their control, including competitors of said corporations, theretofore routed through competitive terminals, through aforesaid terminal of said corporation; and (2) threats of reducing or discontinuing purchase of raw materials or manufactured products from said concerns, in the event of their declining to route their shipments of merchandise and products, or those of other concerns under their control, through aforesaid terminal, and continuing to route such shipments through said competitive terminals;
- (b) Sought to induce, coerce, and compel all or a majority of the steamship companies operating as coast-wise, intercoastal and foreign cargo carriers in carrying freight to and from various ports on said Bay and tributary waters, and did induce, coerce, and compel a substantial number of such companies, and often at extra expense to them, to divert freight tonnage theretofore moving through such other terminals to their own aforesaid terminal, and notwithstanding fact service and facilities of said other terminals were equal to those of their own aforesaid terminal and, in many instances, more economical to such companies and the shippers of the products carried by them than those of the other, by (1) promises or assurances of substantial tonnages or a substantial increase therein of freight to be shipped over the lines of said companies from aforesaid terminal by said corporation and subsidiary, in the event of such companies' diverting the tonnage theretofore moving through said others to aforesaid terminal; and (2) threats of withdrawing or discontinuing shipment of freight or reduction of tonnage of freight shipped over lines of said companies from aforesaid terminal by said corporation and subsidiary, in the event of said companies' failing to divert tonnage theretofore moving through such others to aforesaid terminal; and
- (c) Sought to induce, coerce, and compel all or a majority of the above described steamship companies, and did induce, coerce, and compel a substantial number thereof, through the methods hereinabove set forth, to disclose the identity of consignees and receivers of shipments of freight cargo carried by said companies, and to allow representatives of said corporation and subsidiary to inspect confidential records and manifests of said steamship companies to enable such corporation and subsidiary to bring pressure and influence to bear upon said consignees and receivers to divert their shipments through aforesaid terminal of said corporation and subsidiary; and

Where aforesaid individuals, together constituting an executive committee—

- (d) Cooperated with and assisted said corporation and its subsidiary in the execution of a plan, formulated and inaugurated, and since directed, by one

of said individuals, of using the tonnage of freight shipped by said corporation and subsidiary over steamship lines and their buying power to influence routing of tonnage to their own aforesaid terminal, and in the execution of the herein described acts and practices by utilizing their official positions in said corporation and subsidiary to induce, coerce, and compel the officials of said steamship companies and said industrial concerns to give undue preference to the facilities of their own aforesaid terminal through means of the promises and threats hereinbefore described and set forth; and

Where aforesaid corporation and subsidiary, acting directly through and in cooperation with aforesaid individuals—

- (e) Spied upon the business of their said competitors by securing, from their aforesaid terminal company, names and addresses of customers of said competitors to enable them, i. e., said corporation and its subsidiary, to bring pressure and influence to bear upon said customers to divert their shipments of products purchased from said competitors through their own aforesaid terminal, as herein set forth; and
- (f) Induced, coerced, and compelled their said competitors to divert, change and shift their shipments of products sold by them in interstate and foreign commerce so as to utilize the facilities of the aforesaid terminal of said corporation and subsidiary, to the exclusion of said other terminals on the before referred to Bay, by bringing undue pressure to bear upon the industrial concerns to whom such competitors were selling their products, or from whom they were purchasing supplies of raw materials and manufactured goods as hereinabove set forth;

With result of reducing their own distribution expenses and enhancing and increasing their own revenues, to the unfair competitive disadvantage of aforesaid competitors, by compelling them and said other industrial concerns, against their interest, to route shipments of products sold by them through aforesaid terminal, and to require said competitors to pay more for such raw materials and manufactured products from such industrial concerns than they were required to pay, and to give to said corporation and subsidiary an unfair competitive advantage over said competitors who do not control large tonnage of freight and do not engage in such practices, and to unfairly divert business from one to another of such concerns, from whom said corporation and its subsidiary and their competitors purchased raw materials and manufactured products as above set forth, by requiring that the principal consideration for the purchase of such products be volume of tonnage routed by such concerns through aforesaid terminal as above set forth, instead of usual and normal competitive considerations such as quality, service, and price, and thus to deprive such concerns as do not control large tonnages of freight from fairly competing with the business of said corporation and subsidiary, and with tendency to hinder and suppress competition between said corporation and subsidiary and their said competitors, and to create a monopoly in the sale and distribution of food products, including California canned and dried fruits and vegetables and canned fish and coffee, in interstate, coast-wise and foreign trade in commerce, and to hinder and suppress competition between said industrial concerns from whom such corporation and subsidiary purchased their supplies of raw materials and manufactured products:

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

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Mr. Allen C. Phelps for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Pillsbury, Madison & Sutro*, of San Francisco, Calif., for respondents.

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 California Packing Corporation and Alaska Packers Association, corporations, hereinafter referred to as corporate respondents, and L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn, and Irving F. Lyons, hereinafter referred to as individual respondents, 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said corporate respondent, California Packing Corporation, is a corporation organized under and by virtue of the laws of the State of New York, October 19, 1916, with its principal office located at 101 California Street, in the city of San Francisco, State of California. Said corporate respondent now has an authorized capitalization of 1,500,000 common stock no par value, of which there are now outstanding 965,073 shares, with a valuation of approximately \$40,000,000. The gross assets of said corporate respondent after reserve for depreciation amount to approximately \$56,000,000. Said corporate respondent, since its organization, acquired approximately 84% of the capital stock of the corporate respondent, Alaska Packers Association.

Said corporate respondent, California Packing Corporation, is engaged in the business of packing and distributing a wide line of food products consisting principally of dried fruits, canned fruits, canned vegetables, canned fish, canned Hawaiian pineapples, and coffee. Said corporate respondent is the largest packer and distributor of dried fruits and vegetables in the world, and is an important factor in the Hawaiian pineapple industry and in the packing of sardines and tuna fish since the year 1926. Said corporate respondent owns, controls, and operates more than 100 canning factories, fruit drying plants, and other factories located in the States of California, Oregon, Washington, Idaho, Utah, Wisconsin, Illinois, Minnesota, Florida, New York, and in the Territories of Alaska

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and Hawaii, in which food products under the brands or trade names, "Del Monte," "Sunkist," "Goldbar," "Glass Jar," "President," and "Luxury," are packed for sale and shipment to the wholesale and retail trade throughout the several States of the United States and in foreign countries, sales of said products being made through sales representatives located in leading trade centers of the several States of the United States and in all foreign countries. Said corporate respondent causes said products, when sold, to be transported from the several factories, located as aforesaid, to the purchasers thereof by means of various methods of transportation, namely, automobile truck, railway, and steamship lines, and there has been and now is a constant course of commerce in said respondent's products between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 2. Said corporate respondent, Alaska Packers Association, is a corporation organized under the laws of the State of California, with its principal office located at 111 California Street in the city of San Francisco in said State, and is engaged exclusively in the packing of salmon and in the sale thereof, with nine canning factories located in the Territory of Alaska and one on Pudget Sound in the State of Washington. Said corporate respondent has an authorized capitalization of 75,000 shares of common stock, par value \$100 per share, of which 57,508 shares are outstanding and approximately 84% of which is owned by the said corporate respondent, California Packing Corporation, which operates the business of said Alaska Packers Association as a subsidiary corporation.

PAR. 3. Said corporate respondents, in the course and conduct of their respective businesses as described herein, purchase substantial quantities of raw materials and manufactured products, such as wood, paper, and fiber boxes, containers, and cartons, tin, steel, copper, paint, and other articles too numerous to mention, from the manufacturers and producers thereof located throughout the several States of the United States and in foreign countries, and utilize said products in the several manufacturing processes of their said products, and there is a constant current of said raw materials and other manufactured products purchased by said corporate respondents between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 4. In the course of conduct of their said businesses, said corporate respondents are in substantial competition with other individuals, firms, and corporations located in the various States of the United

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States engaged in the canning and packing of fruits, vegetables, fish, and other products, and in the sale and distribution thereof to jobbers and wholesalers of said products located throughout the several States of the United States and in foreign countries, which said competitors also purchase substantial quantities of raw materials and other manufactured products, as hereinbefore set forth, from manufacturers and producers thereof located throughout the several States of the United States and said competitors also sell products to many of said industrial concerns. Said competitors utilize instrumentalities of distribution and transportation similar to those utilized by the said corporate respondent as aforesaid, but do not engage in practices similar to those described herein.

PAR. 5. Encinal Terminals is a corporation organized under the laws of the State of California, with its principal office and place of business located in the city of Alameda in said State, with an authorized capitalization of 25,000 shares of stock of a par value of \$100 per share, of which 8,815 shares are outstanding, and all of which shares are owned and held by the said corporate respondent, Alaska Packers Association. Said Encinal Terminals is, and has been since the year 1925, engaged in the public wharfinger business in the city of Alameda on the east side of San Francisco Bay, where it operates and maintains facilities necessary in said business, including wharves, sheds, warehouses, and switch tracks for handling freight directed to or from railroad cars and steamships at the wharves, which it leases from said corporate respondent, Alaska Packers Association. The function of said Encinal Terminals in commerce is the same as other terminals located on San Francisco Bay, as hereinafter set forth in paragraph 6.

Said corporate respondents organized the said Encinal Terminals and now direct and control its affairs as a subsidiary of the said corporate respondent, California Packing Corporation, and have utilized since the year 1925, and now utilize the facilities and services of the said Encinal Terminals in the distribution and transportation of the products manufactured and sold by them as aforesaid.

PAR. 6. San Francisco Bay, upon which the cities of San Francisco, Oakland, and Alameda are located, is a land-locked harbor, forty-eight miles long, with 100 miles of shore line, and is fed by two navigable rivers, the Sacramento and the San Joaquin, flowing from the interior of the State of California. It has for many years been recognized as the principal harbor for steamship vessels on the Pacific Coast and ranks second only to New York harbor in the United States with respect to the number of steamship lines landing

their cargoes at docks and wharves located thereon, and in the value of the cargoes handled. Approximately 166 steamship lines, operating as coastwise, intercoastal, and foreign, serving in various trades every port of importance throughout the world, carry freight to and from the various ports on San Francisco Bay.

The port of San Francisco, under the immediate control of the Board of State Harbor Commissioners, is owned by the State of California and is operated on a non-profit basis. This port provides a fruit and produce terminal, a grain terminal, a banana terminal, and a ship-side refrigeration terminal. Originally all water-borne freight cargo entering or leaving the Bay of San Francisco passed over these wharves located in the city of San Francisco.

State Terminal Company, Ltd., was organized in June 1931, and since that time has been engaged in the public wharfing business at the Port of San Francisco at Third and Channel Streets. Said Terminal Company occupies buildings and facilities which it rents from the State of California and conducts a general merchandise terminal, and, in addition, handles canned and dried fruits, fishmeal, and lumber.

The Howard Terminal is located at First and Market Streets, Oakland, Calif., having been organized in 1900, and was originally conducted as a general merchandising terminal handling, principally, coal and grain, and offering storage facilities. In 1916 a pier was constructed to accommodate the docking of deep water vessels, and since that time it has been operated as a ship-side terminal. Said Howard Terminal has equipment for handling freight, including railroad tracks, docks for steamers, loading accommodations for motor trucks, and terminal buildings to accommodate the handling of freight cargo for shippers from carrier to vessel, and also extensive warehousing facilities.

The Parr Terminal Company, organized in 1918, was engaged in the public wharfing business in the city of Oakland, Calif., until October 1, 1934, when its operations were discontinued. The Parr, Richmond Corporation, a subsidiary of the said Parr Terminal Company, now conducts, and since 1927 has conducted, a wharfing business in the city of Richmond, Calif., operating four terminals for this purpose.

The port of Oakland, which is owned by the municipality of Oakland, Calif., began operation as a public wharfing business in 1927. It is situated on the mainland side of San Francisco Bay and offers the usual facilities for the interchange of freight cargo between land and water carriers. It operates three large terminals for ocean-

going vessels and a fourth designed for inland water-way carriers. There are a large number of industrial plants located close to the port of Oakland which would normally utilize its facilities.

The port of Stockton, Calif., located on the San Joaquin River, about ninety miles from San Francisco, began its operations as a public wharfinger in February 1933, and has four public wharves and a grain terminal. Much of the cargo handled through this port's facilities is received from or consigned to interior towns in California. The said port of Stockton, because of its geographical location, has a competitive advantage in securing freight from certain of these towns due to the fact that railroad and truck rates to the port are \$1 per ton cheaper than they are to San Francisco and East Bay ports, including Oakland and Alameda.

The above-described terminals were, during the periods of time of their existence, or are now competitors of said Encinal Terminals, and their function is to act as connecting links between the transportation of products from railroad freight cars or motor trucks into the terminal and to ocean carriers outbound; they operate as the agent of shippers of products being transported and exported, unloading, accumulating and distributing said products to steamships outbound. In addition, said terminals act as the agents for inbound steamers, furnishing them a berth and assisting them in unloading their cargoes and in the assorting and distribution of the same on the docks ready for transportation to interior points in trucks and in railroad cars; said terminals also act as agents for the railroads carrying products to and from said terminals by loading and unloading freight cars, sealing cars, making out switch lists, damage reports, and other similar activities. The steamship companies utilizing said terminals are required to pay a service charge for all cargo received or discharged, and, in addition, the terminals have a charge for loading or unloading railroad cars and trucks, this being paid by the shipper, who is also required to pay a toll charge on a tonnage basis.

PAR. 7. Said individual respondent, L. E. Wood, is president of the said corporate respondent, California Packing Corporation, and vice president of the said corporate respondent, Alaska Packers Association. Said individual respondent, A. M. Lester, is vice president of said corporate respondent, California Packing Corporation, and a director of said corporate respondent, Alaska Packers Association. Said individual respondent, W. H. Levy, is purchasing agent for said corporate respondent, California Packing Corporation. Said individual respondent, A. K. Tichenor, is vice president, general manager and director of said corporate respondent, Alaska Packers

Association. Said individual respondent, H. E. Van Horn, was traffic director of said corporate respondent, California Packing Corporation, from 1918 to 1928, and is now president of said Encinal Terminals. Said individual respondent, Irving F. Lyons, is now traffic manager of the said corporate respondent, California Packing Corporation.

PAR. 8. Said corporate respondents, acting directly, through and in cooperation with the said individual respondents, for more than one year last past, and particularly since the year 1929, have sought to induce, coerce, and compel, and have induced, coerced, and compelled a substantial number of large industrial concerns, shippers of substantial tonnages of freight, including the various and several corporations from whom said corporate respondents and their said competitors, purchase supplies of raw materials and manufactured products, as aforesaid, and who would, but for the activities of said respondents described herein, normally and usually route their products through various and respective terminals located on San Francisco Bay and the rivers tributary thereto, as described in paragraph 6 herein, to divert, change, and shift their routing of shipments so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals by the following methods, to wit:

(a) By promises or assurances that the said corporate respondents would purchase the products of said industrial concerns or would increase their volume of purchases from said industrial concerns, if the said industrial concerns would route the shipments of merchandise and products sold and shipped by them and by other concerns subject to their control, including the competitors of said respondent corporations, through the said Encinal Terminals, which had therefore been routed through said other terminals.

(b) By threats of reduction or discontinuance of the purchase of said raw materials or manufactured products from said industrial concerns if they declined to route their shipments of merchandise and products, or the merchandise and products of other concerns under their control, through the said Encinal Terminals, and continued to route said shipments through the said other terminals.

PAR. 9. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past, and particularly since the year 1929, have sought to induce, coerce and compel all or a majority of the steamship companies operating as coastwise, intercoastal, and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and has induced, coerced, and compelled a substantial number of said steamship companies, often at extra expense to said

steamship companies to divert freight tonnage theretofore moving through said other terminals described in paragraph 6 herein, to said Encinal Terminals, although the service and facilities of the said other terminals are equal to those of the said Encinal Terminals and in many instances more economical to said steamship companies and the shippers of the products carried by them, than of the said Encinal Terminals, by the use of the following methods, to wit:

(a) By promises or assurances of substantial tonnages, or a substantial increase of tonnages, of freight to be shipped over the lines of said steamship companies from the said Encinal Terminals by said corporate respondents if the said steamship companies would divert the tonnage theretofore moving through said other terminals, to said Encinal Terminals.

(b) By threats of withdrawal or discontinuance of the shipment of freight or the reduction of tonnage of freight shipped over the lines of said steamship companies from said Encinal Terminals by the said corporate respondents if the said steamship companies would not divert tonnage theretofore moving through said other terminals to said Encinal Terminals.

PAR. 10. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past and particularly since the year 1929, have sought to induce, coerce and compel all or a majority of the steamship companies operating as coastwise, intercoastal and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and have induced, coerced and compelled a substantial number of said steamship companies, by methods described in sub-paragraphs (a) and (b) of paragraph 9 herein, to disclose the identity of consignees and receivers of shipments of freight cargo carried by said steamship companies and to allow representatives of said corporate respondents to inspect confidential records, including manifests, of said steamship companies, to enable said respondents to bring pressure and influence to bear upon said consignees and receivers to divert their shipments through said Encinal Terminals, as set forth and described in paragraph 8 herein.

PAR. 11. Said individual respondent, H. E. Van Horn, while traffic manager of said corporate respondent, California Packing Corporation, formulated and inaugurated and has since directed the execution of a plan of using the tonnage of freight shipped by said corporate respondents over steamship lines and the buying power of said corporate respondents to influence the routing of tonnage to said Encinal Terminals, and together with other said individual respondents described in paragraph 7 herein, composed what is known as

the "Encinal Executive Committee," and all of said individual respondents have cooperated with and assisted the said corporate respondents in the execution of the said plan and of the acts and practices described and set forth herein, by utilizing their official positions in said corporate respondents to induce, coerce, and compel the officials of said steamship companies and said industrial concerns to give undue preference to the facilities of the said Encinal Terminals by means of said promises and threats as described and set forth in sub-paragraphs (a) and (b) of paragraphs 8, 9, and 10 herein.

PAR. 12. Said corporate respondents, acting directly through and in cooperation with said individual respondents, have spied upon the business of said competitors of said corporate respondents, by securing from said Encinal Terminals the names and addresses of customers of said competitors, to enable said corporate respondents to bring pressure and influence to bear upon said customers, to divert their shipments of products purchased from said competitors, through said Encinal Terminals, as set forth herein.

PAR. 13. Said corporate respondents, acting directly and in cooperation with said individual respondents, induced, coerced, and compelled said competitors of said corporate respondents to divert, change, and shift their shipments of products sold by them in interstate and foreign commerce so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals located on San Francisco Bay, by bringing undue pressure to bear upon the said industrial concerns to whom said competitors were selling their products or from whom said competitors were purchasing supplies of raw materials and manufactured products as more particularly set forth in paragraph 8 herein.

PAR. 14. The effect of the said practices of the said corporate and individual respondents, as set forth herein, has been and now is, to reduce the distribution expenses and to enhance and increase the revenues of said corporate respondents to the unfair competitive disadvantage of said competitors by compelling said competitors and said other industrial concerns, against their interest, to route shipments of products sold by them as aforesaid, through said Encinal Terminals; and to require the said competitors to pay more for said raw materials and manufactured products from said industrial concerns than said corporate respondents are required to pay and to give to said respondent corporations an unfair competitive advantage over said competitors who do not control large tonnage of freight and who do not engage in said practices; and also to unfairly divert business from one to another of the said industrial concerns from whom said respondent corporations and their said competitors purchase raw materials and

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manufactured products as aforesaid, by requiring that the principal consideration for the purchase of said products be the volume of tonnage routed by said industrial concerns through the said Encinal Terminals, as hereinbefore set forth, instead of the usual and normal competitive considerations such as quality, service, and price, and thus to deprive those said industrial concerns that do not control large tonnages of freight from fairly competing for the business of said respondent corporations.

PAR. 15. The foregoing alleged acts and practices of the said corporate and individual respondents have been and still are to tend to hinder and suppress competition between said corporate respondents and their said competitors, and to create a monopoly in said corporate respondents, in the sale and distribution of food products, including California canned and dried fruits, canned Hawaiian pineapple, California canned vegetables, and canned fish, and coffee, in interstate, coastwise and foreign trade and commerce; and to hinder and suppress competition between said industrial concerns from whom said corporate respondents purchase their supplies of raw materials and manufactured products.

PAR. 16. The foregoing alleged acts and practices of the said corporate and individual respondents have been and still are to the prejudice of the public and competitors of said respondent corporations, 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 25, 1936, issued, and on April 29, 1936, served, its complaint in this proceeding upon respondents California Packing Corporation, Alaska Packers Association, L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn, and Irving F. Lyons, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, respondents filed their answer thereto, making general denial of the substantial allegations of the complaint. Subsequently all the respondents petitioned the Federal Trade Commission for permission to withdraw said answer and to file their substituted answer to the complaint, in which respondents ad-

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mitted, for the purposes of this proceeding only, all the material allegations of said complaint. Pursuant to permission granted by the Commission, said original answer was withdrawn by said respondents and said substituted answer was filed in lieu thereof. Said respondents also consented therein that the Commission might proceed to make its findings of fact without further proceedings and that an order might issue and be served upon the respondents requiring them to cease and desist from the unfair methods of competition alleged in the complaint. The said Commission having duly considered the above 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, California Packing Corporation, is a corporation organized under and by virtue of the laws of the State of New York, October 19, 1916, with its principal office located at 101 California Street, in the city of San Francisco, State of California. Said corporate respondent now has an authorized capitalization of 1,500,000 common stock no par value, of which there are now outstanding 965,073 shares, with a valuation of approximately \$40,000,000. The gross assets of said corporate respondent after reserve for depreciation amount to approximately \$56,000,000. Said corporate respondent, since its organization, acquired approximately 84% of the capital stock of the corporate respondent, Alaska Packers Association.

Said corporate respondent, California Packing Corporation, is engaged in the business of packing and distributing a wide line of food products consisting principally of dried fruits, canned fruits, canned vegetables, canned fish, canned pineapples, and coffee. Said corporate respondent is one of the largest packers and distributors of dried fruits and vegetables in the world, and is an important factor in the Hawaiian pineapple industry and in the packing of sardines and tuna fish since the year 1926. Said corporate respondent owns, controls, and operates more than 100 canning factories, fruit drying plants and other factories located in the States of California, Oregon, Washington, Idaho, Utah, Wisconsin, Illinois, Minnesota, Florida, New York and in the Territories of Alaska and Hawaii, in which food products under the brands or trade names, "Del Monte," "Sunkist," "Goldbar," "Glass Jar," "President," and "Luxury," are packed for sale and shipment to the wholesale and retail trade throughout the several States of the United States and in foreign countries, sales of said products being made through sales representatives located in leading

trade centers of the several States of the United States and in all foreign countries. Said corporate respondent causes said products, when sold, to be transported from the several factories, located as aforesaid, to the purchasers thereof by means of various methods of transportation, namely, automobile truck, railway, and steamship lines, and there has been and now is a constant course of commerce in said respondent's products between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 2. Said corporate respondent, Alaska Packers Association, is a corporation organized under the laws of the State of California, with its principal office located at 111 California Street in the city of San Francisco in said State, and is engaged exclusively in the packing of salmon and in the sale thereof, with nine canning factories located in the Territory of Alaska and one on Puget Sound in the State of Washington. Said corporate respondent has an authorized capitalization of 75,000 shares of common stock, par value \$100 per share, of which 57,508 shares are outstanding and approximately 84% of which is owned by the said corporate respondent, California Packing Corporation, which operates the business of said Alaska Packers Association as a subsidiary corporation.

PAR. 3. Said corporate respondents, in the course and conduct of their respective businesses as described herein, purchase substantial quantities of raw materials and manufactured products, such as wood, paper, and fiber boxes, containers and cartons, tin, steel, copper, paint, and other articles too numerous to mention, from the manufacturers and producers thereof located throughout the several States of the United States and in foreign countries, and utilize said products in the several manufacturing processes of their said products, and there is a constant current of said raw materials and other manufactured products purchased by said corporate respondents between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 4. In the course and conduct of their said businesses, said corporate respondents are in substantial competition with other individuals, firms, and corporations located in the various States of the United States engaged in the canning and packing of fruits, vegetables, fish, and other products, and in the sale and distribution thereof to jobbers and wholesalers of said products located throughout the several States of the United States and in foreign countries, which said competitors also purchase substantial quantities of raw

materials and other manufactured products, as hereinbefore set forth, from manufacturers and producers thereof located throughout the several States of the United States and said competitors also sell products to many of said industrial concerns. Said competitors utilize instrumentalities of distribution and transportation similar to those utilized by the said corporate respondent as aforesaid, but do not engage in practices similar to those described herein.

PAR. 5. Encinal Terminals is a corporation organized under the laws of the State of California, with its principal office and place of business located in the city of Alameda in said State, with an authorized capitalization of 25,000 shares of stock of a par value of \$100 per share, of which 8,815 shares are outstanding, and all of which shares are owned and held by the said corporate respondent, Alaska Packers Association. Said Encinal Terminals is, and has been since the year 1925, engaged in the public wharfinger business in the city of Alameda on the east side of San Francisco Bay, where it operates and maintains facilities necessary in said business, including wharves, sheds, warehouses, and switch tracks for handling freight directed to or from railroad cars and steamships at the wharves. It leases from said corporate respondent, Alaska Packers Association, the land on which said terminal facilities are located. The function of said Encinal Terminals in commerce is the same as other terminals located on San Francisco Bay, as hereinafter set forth in paragraph 6. Said corporate respondents organized the said Encinal Terminals and now direct and control its affairs as a subsidiary of the said corporate respondent, California Packing Corporation, and have utilized since the year 1925, and now utilize the facilities and services of the said Encinal Terminals in the distribution and transportation of the products manufactured and sold by them as aforesaid.

PAR. 6. San Francisco Bay, upon which the cities of San Francisco, Oakland, and Alameda are located, is a land-locked harbor, forty-eight miles long, with 100 miles of shore line, and is fed by two navigable rivers, the Sacramento and the San Joaquin, flowing from the interior of the State of California. It has for many years been recognized as the principal harbor for steamship vessels on the Pacific Coast and ranks second only to New York harbor in the United States with respect to the number of steamship lines landing their cargoes at docks and wharves located thereon, and in the value of the cargoes handled. Approximately 166 steamship lines, operating as coastwise, inter-coastal and foreign, serving in various trades every port of importance throughout the world, carry freight to and from the various ports on San Francisco Bay.

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The port of San Francisco, under the immediate control of the Board of State Harbor Commissioners, is owned by the State of California and is operated on a non-profit basis. This port provides a fruit and produce terminal, a grain terminal, a banana terminal and a ship-side refrigeration terminal. Originally all water-borne freight cargo entering or leaving the Bay of San Francisco passed over these wharves located in the city of San Francisco.

State Terminal Company, Ltd., was organized in June 1931, and since that time has been engaged in the public wharfinger business at the Port of San Francisco at Third and Channel Streets. Said Terminal Company occupies buildings and facilities which it rents from the State of California and conducts a general merchandise terminal, and, in addition, handles canned and dried fruits, fishmeal, and lumber.

The Howard Terminal is located at First and Market Streets, Oakland, Calif., having been organized in 1900, and was originally conducted as a general merchandising terminal handling, principally, coal and grain, and offering storage facilities. In 1916 a pier was constructed to accommodate the docking of deep water vessels, and since that time it has been operated as a ship-side terminal. Said Howard Terminal has equipment for handling freight, including railroad tracks, docks for steamers, loading accommodations for motor trucks, and terminal buildings to accommodate the handling of freight cargo for shippers from carrier to vessel, and also extensive warehousing facilities.

The Parr Terminal Company, organized in 1918, was engaged in the public wharfinger business in the city of Oakland, Calif., until October 1, 1931, when its operations were discontinued. The Parr, Richmond Corporation, a subsidiary of the said Parr Terminal Company, now conducts, and since 1927 has conducted, a wharfinger business in the city of Richmond, Calif., operating four terminals for this purpose.

The port of Oakland, which is owned by the municipality of Oakland, Calif., began operation as a public wharfinger in 1927. It is situated on the mainland side of San Francisco Bay and offers the usual facilities for the interchange of freight cargo between land and water carriers. It operates three large terminals for ocean-going vessels and a fourth designed for inland water-way carriers. There are a large number of industrial plants located close to the port of Oakland which would normally utilize its facilities.

The port of Stockton, Calif., located on the San Joaquin River, about ninety miles from San Francisco, began its operations as a public wharfinger in February 1933, and has four public wharves and a grain terminal. Much of the cargo handled through this port's facilities is received from or consigned to interior towns in

California. The said port of Stockton, because of its geographical location, has a competitive advantage in securing freight from certain of these towns due to the fact that railroad and truck rates to the ports are \$1 per ton cheaper than they are to San Francisco and East Bay ports, including Oakland and Alameda.

The above-described terminals were, during the periods of time of their existence, or are now competitors of said Encinal Terminals, and their function is to act as connecting links between the transportation of products from railroad freight cars or motor trucks into the terminal and to ocean carriers outbound; they operate as the agent of shippers of products being transported and exported, unloading, accumulating, and distributing said products to steamships outbound. In addition, said terminals act as the agents for inbound steamers, furnishing them a berth and assisting them in unloading their cargoes and in the assorting and distribution of the same on the docks ready for transportation to interior points in trucks and in railroad cars; said terminals also act as agents for the railroads carrying products to and from said terminals by loading and unloading freight cars, sealing cars, making out switch lists, damage reports, and other similar activities. The steamship companies utilizing said terminals are required to pay a service charge for all cargo received or discharged, and, in addition, the terminals have a charge for loading or unloading railroad cars and trucks, this being paid by the shipper, who is also required to pay a toll charge on a tonnage basis.

PAR. 7. Said individual respondent, L. E. Wood, is president of the said corporate respondent, California Packing Corporation, and vice president of the said corporate respondent, Alaska Packers Association. Said individual respondent, A. M. Lester, is vice president of said corporate respondent, California Packing Corporation, and a director of said corporate respondent, Alaska Packers Association. Said individual respondent, W. H. Levy is purchasing agent for said corporate respondent, California Packing Corporation. Said individual respondent, A. K. Tichenor, is vice president, general manager and director of said corporate respondent, Alaska Packers Association. Said individual respondent, H. E. Van Horn was traffic director of said corporate respondent, California Packing Corporation, from 1918 to 1928, and is now president of said Encinal Terminals. Said individual respondent, Irving F. Lyons, is now traffic manager of the said corporate respondent, California Packing Corporation.

PAR. 8. Said corporate respondents, acting directly, through and in cooperation with the said individual respondents, for more than

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one year last past, and particularly since the year 1929, have sought to induce, coerce and compel, and have induced, coerced and compelled a substantial number of large industrial concerns, shippers of substantial tonnages of freight, including the various and several corporations from which said corporate respondents and their said competitors, purchase supplies of raw materials and manufactured products, as aforesaid, and who would, but for the activities of said respondents described herein, normally and usually route their products through various and respective terminals located on San Francisco Bay and the rivers tributary thereto, as described in paragraph 6 herein, to divert, change and shift their routing of shipments so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals by the following methods, to wit:

(a) By promises or assurances that the said corporate respondents would purchase the products of said industrial concerns or would increase their volume of purchases from said industrial concerns, if the said industrial concerns would route the shipments of merchandise and products sold and shipped by them and by other concerns subject to their control, including the competitors of said respondent corporations, through the said Encinal Terminals, which had therefore been routed through said other terminals.

(b) By threats of reduction or discontinuance of the purchase of said raw materials or manufactured products from said industrial concerns if they declined to route their shipments of merchandise and products, or the merchandise and products of other concerns under their control, through the said Encinal Terminals, and continued to route said shipments through the said other terminals.

PAR. 9. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past, and particularly since the year 1929, have sought to induce, coerce and compel all or a majority of the steamship companies operating as coastwise, intercoastal, and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and have induced, coerced and compelled a substantial number of said steamship companies, often at extra expense to said steamship companies to divert freight tonnage theretofore moving through said other terminals described in paragraph 6 herein, to said Encinal Terminals, although the service and facilities of the said other terminals are equal to those of the said Encinal Terminals and in many instances more economical to said steamship companies and the shippers of the products carried by them, than those of the said Encinal Terminals, by the use of the following methods, to wit:

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(a) By promises or assurances of substantial tonnages, or a substantial increase of tonnage, of freight to be shipped over the lines of said steamship companies from the said Encinal Terminals by said corporate respondents if the said steamship companies would divert the tonnage theretofore moving through said other terminals, to said Encinal Terminals.

(b) By threats of withdrawal or discontinuance of the shipment of freight or the reduction of tonnage of freight shipped over the lines of said steamship companies from said Encinal Terminals by the said corporate respondents if the said steamship companies would not divert tonnage theretofore moving through said other terminals to said Encinal Terminals.

PAR. 10. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past and particularly since the year 1929, have sought to induce, coerce, and compel all or a majority of the steamship companies operating as coastwise, intercoastal and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and have induced, coerced and compelled a substantial number of said steamship companies, by methods described in subparagraphs (a) and (b) of paragraph 9 herein, to disclose the identity of consignees and receivers of shipments of freight cargo carried by said steamship companies and to allow representatives of said corporate respondents to inspect confidential records, including manifests, of said steamship companies, to enable said respondents to bring pressure and influence to bear upon said consignees and receivers to divert their shipments through said Encinal Terminals, as set forth and described in paragraph 8 herein.

PAR. 11. Said individual respondent, H. E. Van Horn, while traffic manager of said corporate respondent, California Packing Corporation, formulated and inaugurated and has since directed the execution of a plan of using the tonnage of freight shipped by said corporate respondents over steamship lines and the buying power of said corporate respondents to influence the routing of tonnage to said Encinal Terminals, and who together with other said individual respondents described in paragraph 7 herein, composed what is known as the "Encinal Executive Committee," and all of said individual respondents have cooperated with and assisted the said corporate respondents in the execution of the said plan and of the acts and practices described and set forth herein, by utilizing their official positions in said corporate respondents to induce, coerce and compel the officials of said steamship companies and said indus-

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trial concerns to give undue preference to the facilities of the said Encinal Terminals by means of said promises and threats as described and set forth in subparagraphs (a) and (b) of paragraphs 8, 9, and 10 herein.

PAR. 12. Said corporate respondents, acting directly through and in cooperation with said individual respondents, have spied upon the business of said competitors of said corporate respondents, by securing from said Encinal Terminals the names and addresses of customers of said competitors, to enable said corporate respondents to bring pressure and influence to bear upon said customers, to divert their shipments of products purchased from said competitors, through said Encinal Terminals, as set forth herein.

PAR. 13. Said corporate respondents, acting directly and in cooperation with said individual respondents, induced, coerced, and compelled said competitors of said corporate respondents to divert, change and shift their shipments of products sold by them in interstate and foreign commerce so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals located on San Francisco Bay, by bringing undue pressure to bear upon the said industrial concerns to whom said competitors were selling their products or from whom said competitors were purchasing supplies of raw materials and manufactured products as more particularly set forth in paragraph 8 herein.

PAR. 14. The effect of the said practices of the said corporate and individual respondents, as set forth herein, has been and now is, to reduce the distribution expenses and to enhance and increase the revenues of said corporate respondents to the unfair competitive disadvantage of said competitors by compelling said competitors and said other industrial concerns, against their interest, to route shipments of products sold by them as aforesaid, through said Encinal Terminals; and to require the said competitors to pay more for said raw materials and manufactured products from said industrial concerns than said corporate respondents are required to pay and to give to said respondent corporations an unfair competitive advantage over said competitors who do not control large tonnage of freight and who do not engage in said practices; and also to unfairly divert business from one to another of the said industrial concerns from whom said respondent corporations and their said competitors purchase raw materials and manufactured products as aforesaid, by requiring that the principal consideration for the purchase of said products be the volume of tonnage routed by said industrial concerns through the said Encinal Terminals, as hereinbe-

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fore set forth, instead of the usual and normal competitive considerations such as quality, service, and price, and thus to deprive those said industrial concerns that do not control large tonnages of freight from fairly competing for the business of said respondent corporations.

PAR. 15. The foregoing alleged acts and practices of the said corporate and individual respondents have been and still are to tend to hinder and suppress competition between said corporate respondents and their said competitors, and to create a monopoly in said corporate respondents, in the sale and distribution of food products, including California canned and dried fruits, canned pineapple, California canned vegetables, and canned fish, and coffee, in interstate, coastwise and foreign trade and commerce; and to hinder and suppress competition between said industrial concerns from whom said corporate respondents purchase their supplies of raw materials and manufactured products.

CONCLUSION

The aforesaid acts and practices of the respondents, California Packing Corporation, Alaska Packers Association, L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn and Irving F. Lyons, are to the prejudice of the public and of 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on June 30, 1937 by respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated 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."

It is ordered, That the respondents California Packing Corporation and Alaska Packers Association and their respective officers, agents, representatives, servants, and employees, and L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn, and Irving

F. Lyons, in connection with the offering for sale, sale and distribution of food products in interstate commerce by said California Packing Corporation and Alaska Packers Association for use or resale within the United States or any territory thereof, or in the District of Columbia, cease and desist from:

1. Inducing, coercing, or compelling in any manner the routing of shipments of commodities purchased or sold by concerns which are in competition with the California Packing Corporation or Alaska Packers Association in the sale and distribution of food products, including dried fruits, canned fruits, canned vegetables, canned fish, canned pineapples, or coffee, to or through Encinal Terminals, Alameda, California, or any public terminal owned or controlled by said California Packing Corporation or Alaska Packers Association; provided, that nothing in this paragraph shall prevent voluntary cooperation in the normal course of business between the said competitors and said California Packing Corporation or Alaska Packers Association in lawfully making up pooled cars, in arranging enclosures, or other cooperative shipping arrangements.

2. Inducing, coercing, or compelling industrial concerns from which the California Packing Corporation or Alaska Packers Association purchase supplies of raw materials and manufactured products, to divert, change or shift to or through Encinal Terminals or any such subsidiary terminal, the routing made by such concerns of shipments of commodities sold by them to, or purchased from, industrial concerns other than the California Packing Corporation or Alaska Packers Association; provided, that nothing in this paragraph shall prevent the solicitation of tonnage consisting of shipments of commodities to the extent that they are to be used in the manufacture of finished products which said California Packing Corporation or Alaska Packers Association have previously contracted to purchase.

3. Inducing, coercing, or compelling companies operating or controlling steamship lines operating as coastwise, intercoastal, or foreign cargo carriers engaged in carrying freight to and from various points on San Francisco Bay and tributary waters to divert freight tonnage, the routing of which such steamship lines control and in which tonnage the California Packing Corporation and the Alaska Packers Association have no proprietary or contractual interest, to Encinal Terminals, or any such subsidiary terminal, or to utilize the facilities thereof for the handling of commodities in which the California Packing Corporation and the Alaska Packers Association have no such interest, provided, that nothing in this paragraph shall prevent the solicitation of such freight under the control of said

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steamship companies undertaken for the purpose of facilitating or expediting the movement of specific shipments of commodities being made to or by said California Packing Corporation or Alaska Packers Association.

4. Inducing, coercing, or compelling steamship companies operating as coastwise, intercoastal or foreign cargo carriers engaged in carrying freight to and from various ports in San Francisco Bay and tributary waters unlawfully to disclose the identity of consignees and receivers of shipments of freight cargo carried by said steamship companies, or unlawfully to allow representatives of said California Packing Corporation or Alaska Packers Association to inspect records including manifests, of such steamship companies, except insofar as such records concern or relate to freight shipped or received by the California Packing Corporation or the Alaska Packers Association or are open to public inspection.

5. Inspecting or examining any such confidential records of said steamship companies, except insofar as same concern or relate to freight shipped or received by the corporate respondents or are open to public inspection.

6. Pursuing a plan or policy of using directly or indirectly the tonnage of freight shipped or received by said California Packing Corporation or Alaska Packers Association or their buying power to induce, coerce or compel said steamship companies or said industrial concerns to route tonnage to or through Encinal Terminals or any such subsidiary terminal, or to use the facilities thereof, in violation of this order, through threats of withdrawing or diminishing, or promises of making or increasing, directly or indirectly, purchases or shipments by said California Packing Corporation or Alaska Packers Association.

Provided, Nothing in this order shall prohibit the independent solicitation of traffic for said Encinal Terminals, by H. E. Van Horn, as an officer or agent of said Encinal Terminals, or by any other agent of said Encinal Terminals, in the normal course of business of a public terminal, without reliance upon or reference to the affiliation of said Encinal Terminals with said California Packing Corporation or Alaska Packers Association or their bargaining power as purchasers or shippers.

It is further ordered, That the respondents and each of them shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THE RIESER 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 2799. Complaint, May 8, 1936—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of tissues, in competition with those engaged in sale and distribution of handkerchiefs and of compounds, medicaments, or preparations of various kinds of treatment, relief, or cure of colds, hay fever, and sinus troubles, and including among said various competitors those who truthfully describe their said handkerchiefs or truthfully advertise, describe, and represent their said remedies, etc., on labels and in advertisements thereof—

Described its said products, on packages and cartons in which sold, as "MENTHIO-KERCHIEF The Mentholated Tissue Handkerchief," and stated thereon "RELIEVES HEAD COLDS SINUS AND HAY FEVER * * * CLEARS NASAL PASSAGES," and on reverse side of package or carton, and under statement "WHY DOCTORS RECOMMEND MENTHIO-KERCHIEF," "They are better than ordinary handkerchiefs, because they are disposable and sanitary . . . They are better than ordinary tissues, because they are mentholated," and "Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble, and Hay Fever, etc," facts being its said tissue products, thus designated, described, and represented, had not been and were not recommended by doctors as a cure or remedy for head colds and other ailments above set forth, and use thereof did not, and could not, have any beneficial effects as remedy or cure for hay fever or sinus trouble, or afford any appreciable relief to those suffering therefrom, and any benefits which a patient might derive through use of such tissues would be purely psychological and not physical, and said products were not, as signified to consuming public from unqualified words "handkerchief" or "kerchief," articles for use in connection with nose, face, or hands and made of silk, linen or cotton, and said products were not better than ordinary handkerchiefs, either because disposable or mentholated, or for any other cause;

With capacity and tendency to unfairly divert trade to it and thereby injure competitors above designated:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Fulton Brylawski, of Washington, D. C., 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